

## **FORMER CHAPTER 480-08 WAC PROCEDURE**

(Superseded November 12, 1989, by Chapter 480-09 WAC)\*

### **Former WAC 480-08-010 Communications.**

All communications, including protests, are deemed officially received only when delivered to the Office of the Secretary. Those alleging such delivery have the burden of proof, and a mere assertion that a protest to an application has been filed is not enough to compel the Commission to reopen a proceeding. Former WAC 480-08-010; Former WAC 480-08-060(5). Order M. V. No. 137446, In re Hubert M. Brumfield/Mason Timber Inc., App. No. P-71692 (March 1988).

Filing and service are separately defined by Commission rules. A document is not "filed" until received by the Commission, while a document may be "served" by deposit into the United States mail, correctly addressed, with first class postage prepaid. Exceptions mailed on the last day for filing and not received until the next day, without a request for an extension of time for filing, are late-filed and subject to a motion to strike. Former WAC 480-08-010; Former WAC 480-08-060(3). Order M. V. No. 134858, In re Zeb F. Johnson, d/b/a All West Auto Transport, App. No. P-69380 (October 1986).

Exceptions received one day after the last day for filing, are untimely filed and should be rejected. Former WAC 480-08-010; Former WAC 480-08-240. Order M. V. No. 128635, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (October 1983).

### **Former WAC 480-08-040 Informal procedure; applications and protests.**

Subsections of former rule:

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|---|-------------------|
| (1) Informal complaints [how to make; procedure]. | (3) Applications. |
| (2) Informal complaints--contents.                | (4) Protests.     |

The Commission is not required by chapter 34.04 RCW by Former WAC 480-08-040(4), or by WAC 480-12-045 to hold hearings when no dispute exists regarding the only material fact.

Order M. V. No. 138133, In re Metro Hauling, Inc., App. No. E-19614 (August 1988). Related filings: Order M. V. No. 138134, In re Great Northern Truck Express, Inc., App. No. E-19633 (August 1988); Order M. V. No. 138132, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (August 1988). Order M. V. No. 138357, In re Action Express, Inc., App. No. E-19642 (November 1988).

When a protestant has an interest potentially harmed by a grant of authority, weight restrictions in its permit will not preclude it from challenging the full scope of the applicant's direct case. Former WAC 480-08-040(4); WAC 480-12-045. Order M. V. No. 137248, In re Jobbers Freight Service, Inc., App. No. E-19348 (February 1988).

Filing a valid protest confers party status and accords a protestant the right to contest any issue that may adversely affect its interest. A parcel delivery carrier may participate fully in an application for unrestricted general freight authority. Former RCW 34.04.090(2); Former WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 136348, In re Jobbers Freight Service, Inc., App. No. E-19348 (August 1987).

### **Former WAC 480-08-040 (cont.)**

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\* See Index for references to current procedural rules.

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A city and county with authority over garbage and solid waste, but without authority over recyclables and no stated interest in recyclable commodities, have not shown potential adverse effect supporting their standing to protest an application for authority to transport recyclables. Former WAC 480-08-040(4); WAC 480-12-045(3)(b). Order M. V. No. 133753, In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

A common carrier may have a valid interest adverse to an application for broker authority and therefore have standing to protest such an application. Former WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 130356, In re Continental Traffic Company, Inc., App. No. P-67117 (September 1984).

If a protestant's witness, authorized to speak for the protestant, makes a statement on the record in a hearing defining the extent of the protest, the Commission and the parties have a right to rely upon the representation. Former WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 129315, In re Donald W. Lemmons d/b/a Interstate Wood Products, App. No. E-18789 (April 1984).

Even though a taxi company may potentially be injured economically by a grant of authority, because it is not subject to Commission regulation it has no standing to protest a potential grant of authority. RCW 81.70 030(2); Former WAC 480-08-040(4). Order M. V. CH. No. 950, In re Brown's Limousine Crew Car, Inc., App. No. CHA-221 (July 1983).

Applicants for a transfer of authority are not entitled as a matter of right to a transfer without a hearing. The Commission, within its discretion, may order a hearing regardless of whether the application is protested. RCW 81.80.270; Former WAC 480-08-040(4); WAC 480-12-050. Order M. V. No. 126852,, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982).

### **Former WAC 480-08-050 Pleadings.**

Subsections of former rule:

- |                               |                                |
|-------------------------------|--------------------------------|
| (1) Pleadings enumerated.     | (11) Formal complaints--       |
| (2) Verification.             | contents.                      |
| (3) Time for motion.          | (12) Petitions.                |
| (4) Time for answer or reply. | (13) Petitions--contents.      |
| (5) Defective pleadings       | (14) Answer.                   |
| [may be returned].            | (15) Reply.                    |
| (6) Liberal construction.     | (16) Motions [including for    |
| (7) Amendments.               | reopening].                    |
| (8) Disposition of motions.   | (17) Petitions for rule making |
| (9) Consolidation of          | amendment or repeal.           |
| proceedings.                  | (18) Declaratory rulings.      |
| (10) Formal Complaints.       | (19) Forms.                    |

### **Cross References**

- < Liberal Construction of Exceptions: See Former WAC 480-08-240.
- < Reopening on Reconsideration: See Former WAC 480-08-250.
- < **See Index for references to current procedural rules.**

### **Former WAC 480-08-050 (cont.)**

**-- Liberal construction**

The Commission will liberally construe pleadings and may decide a petition based on the nature of the issues presented rather than the document's title. Former WAC 480-08-050(6). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

The Commission will deal with pleadings on the basis of the nature of the relief requested, rather than the title. Former WAC 480-08-050(6). Order M. V. No. 139930, In re Richard B. Morris (July 1989).

The Commission will liberally construe all pleadings when doing so does not affect the substantial rights of the parties. An exception that is timely filed, cites to the record, and clearly states the desire of the pleader will not be rejected when no prejudice to other parties is shown. Former WAC 480-08-050(6); Former WAC 480-08-250. Order M. V. No. 137819, In re Craig J. Elliott, d/b/a TLC Moving & Storage, App. No. E-19421 (June 1988).

The Commission will liberally construe pleadings and similar documents and disregard defects that do not affect the substantial rights of parties. Exceptions that fail to include proposed Findings of Fact, but which are timely filed, served on all parties of record, cite to the record, and clearly specify what the exceptor desires, will be accepted. Former WAC 480-08-050(6); Former WAC 480-08-240. Order M. V. No. 136658, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70608 (September 1987).

A petition for "recision" of an order denying temporary authority that requests that the petitioner be granted leave to amend its application will be treated as a petition for reconsideration. Former WAC 480-08-050. Order M. V. No. 134647, In re Thunderbird Lubrications, Inc., App. No. P-70485 (September 1986).

A timely-filed pleading should not be rejected merely because it is handwritten and does not provide a detailed citation to the record. Former WAC 480-08-050(6). Order M. V. C. No. 1458, In re Pacific Northwest Transportation Services, Inc., App. No. D-2445 (September 1984).

Liberal pleading rules do not properly extend to results and procedures not contemplated by the original pleading. A protest to a grant of temporary authority, opposed by a motion to strike, may not subsequently be deemed a complaint at the mere request of the protestant. Former WAC 480-08-050(6). Order M. V. No. 127318, In re Amalgamated Services, Inc., App. No. P-66973 (March 1983).

Protests, like other pleadings, should be liberally construed and amendments liberally permitted. Former WAC 480-08-050(6); WAC 480-12-045. Order M. V. No. 127174, In re Federal Transfer Company, Inc./J & H Trucking, Inc., App. No. P-66301 (February 1983).

Commission rules allow amendments to pleadings and other relevant documents. Protests are moving documents and shall be liberally construed. Former WAC 480-08-050(6),(7). Order M. V. No. 126620, In re Federal Transfer Company, Inc./J & H Trucking, Inc., App. No. P-66301 (January 1983).

**Former WAC 480-08-050 (cont.)**

Protests and applications are the moving documents by which questions of authority come before the Commission for resolution. They are analogous to pleadings and should be liberally construed. Former WAC 480-08-050(6). Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc.,

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App. No. P-66283 (December 1982).

The Commission may decide a petition on the basis of the issues presented, and is not confined by the title of the petition. RCW 81.04.200; Former WAC 480-08-050(6). Order S. B. C. No. 398, In re Island Ferry, Inc., App. No. B-277 (August 1982).

### **-- Time for motion**

When a motion is not filed within the ten-day time period prescribed for pleadings, the motion is not timely made. Former WAC 480-08-050(3). Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982).

### **-- Consolidation**

The Commission may deny protestant's petition for consolidation when it is not definite that the principles of Ashbacker Radio Corp. v. FCC apply, when there is no identity of issues, when it is not shown that the applicants have identical witnesses, and when hearings have already commenced in two of the proceedings.

The Commission will balance the burden on protestants to present identical protestants' cases in each proceeding against the burdens inherent in consolidating the proceedings. Former WAC 480-08-050(9). Order M. V. G. No. 1329, Northwest Unitech, Inc., PFT Medical Wastes of Wa., Inc., Sure-Way Incineration, American Environmental Management Corp., App. Nos. GA-864, GA-865, GA-868, GA-874 (April 1988).

An applicant's motion to consolidate a rate docket hearing with an application for additional authority will be denied absent a showing that the issues in the two proceedings are similar, or that they are related in any way other than their origination with the same carrier. Former WAC 480-08-050(9). Order M. V. No. 133823, In re Parker Refrigerated Service, Inc., App. No. E-19296 (April 1986).

### **-- Formal complaints**

When a complaint is unclear and imprecise, when it is not known whether the complainant is in competition with respondent carriers, and when some of the matters alleged have no competitive impact on the complainant, the complaint should be dismissed. RCW 81.04.110; Former WAC 480-08-050(11). Midland Transportation, Inc./H & K Transport, Inc., and Art Nordang Trucking, Inc., Cause No. TV-2037 (February 1988).

A formal complaint will be set for hearing. RCW 81.80.340; Former WAC 480-08-050(11). Order TV-1706, Mumma Trucking Co., Inc. v. Delta Trucking Co., Inc. (August 1984).

## **Former WAC 480-08-050 (cont.)**

### **-- Reopening after proposed order**

Undocumented assertions about agreements among parties ordinarily will not support reopening after entry of an initial order. Timely negotiation and filing of written agreements are the surest means to quick and

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economical resolution of business with the Commission. Former WAC 480-08-010. Order M. V. No. 137805, In re Mid Valley Equipment, Inc., App. No. E-19606 (May 1988).

When the Commission inadvertently grants more authority than applied for, the Commission will reopen the matter and correct the error. RCW 81.04.210; Former WAC 480-08-050(16). Order M. V. No. 132377, In re Sartin Construction and Trucking, Inc., App. No. E-18805 (August 1985).

Reopening is not proper on allegations that the protestants do not have an interest adverse to the application--after one protestant went out of business and another has only an application pending to serve the same territory--where the first protestant was operating at the time of the hearing and the second protestant's pending application might be adversely affected by a grant of authority to the applicant. Former WAC 480-08-050(16); WAC 480-12-045(3). Order M. V. No. 131310, In re United Truck Lines, Inc., App. No. E-18895 (January 1985).

When a hearing is reopened after a proposed order is entered but prior to entry of a final order, the presiding officer will issue a supplemental proposed order. RCW 81.04.210; Former WAC 480-08-050(16). Cause TR-1148, Spokane County v. Burlington Northern Railroad, Inc. (August 1984).

A reopened hearing should be limited to matters stated in the order authorizing reopening. No repetitive evidence should be allowed, and rebuttal evidence should be allowed only to matters raised for the first time on reopening. Former WAC 480-08-050(16). Cause TR-1148, Spokane County v. Burlington Northern Railroad, Inc. (August 1984).

A matter remanded from Superior Court, and heard upon full statutory notice, provided a full opportunity for the applicant to cite all relevant evidence that it had in its possession. Applicant's attempt on exception to the proposed order on remand, to enter into the record documents not presented at hearing should be denied--absent a showing that the documents were unavailable to the applicant at the time of hearing. Former RCW 34.04.100(2); Former WAC 480-08-050(16). Order M. V. CH. No. 995, In re O'Connor Limousine Service, Inc., App. No. CHA-199 (November 1983).

When the Commission determines on review that a different test period should be utilized than the year the presiding officer considered, the Commission may allow reopening to take evidence on activity during the appropriate test period. Former WAC 480-08-050; WAC 480-12-050. Order M. V. No. 126785, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (April 1983).

When a portion of an application is not protested and the applicant has not previously been afforded the opportunity to submit written statements of support as to that portion, the record will be reopened to accept shipper support statements submitted with exceptions. Former WAC 480-08-050(16); WAC 480-12-045(6). Order M. V. No. 127482, In re E-L Trucking Company, App. No. E-18720 (April 1983).

### **Former WAC 480-08-050 (cont.)**

When the parties' apparent agreement is shown to be a nullity and a reopening of a hearing is ordered, that hearing should be held unless the parties satisfy the presiding officer that all issues among them have been resolved. Former RCW 34.04.090(3); Former WAC 480-08-050(16). Order M. V. No. 127205, In re Nello Pistoresi & Son, Inc., App. No. E-18681 (February 1983).

When an applicant's report of a settlement is inconsistent with the settlement acknowledged by protestant's

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letter to the presiding officer, the hearing should be reopened as it is not shown that all parties had agreed to the settlement. Former RCW 34.04.090(4); Former WAC 480-08-050(16). Order M. V. No. 126943, In re Nello Pistoresi & Son, Inc., App. No. E-18681 (January 1983).

### **Former WAC 480-08-060 Filing and service.**

Subsections of former rule:

- (1) Filing of formal complaints and petitions.
- (2) Filing of other pleadings.
- (3) Service by parties.
- (4) Service by commission.
- (5) Certificate of service.

### **Cross References**

- < Answer--Time for Filing: See Former WAC 480-08-050.
- < Documents Deemed Officially Received by Commission Only When Delivered: See Former WAC 480-08-010.
- < Exceptions--Time for Filing: See Former WAC 480-08-240.
- < Reply to Answer--Time for Filing: See Former WAC 480-08-050.
- < Reply to Exceptions--Time for Filing: See Former WAC 480-08-240.
- < **See Index for references to current procedural rules.**

A failure of service that has a potentially severe adverse effect upon a party, renders service of the pleading insufficient. Former WAC 480-08-060; WAC 480-09-420(1). Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies Cause No. GA-851 (December 1989).

Documents that are not properly served on all parties of record will be disregarded. A letter not served on all parties cannot be considered as a petition to reopen the hearing. Former WAC 480-08-060. Order M. V. No. 139671, In re Centennial Contractors, Inc., App. No. P-72174 (May 1989).

The means of service used by the Commission to apprise potential parties in a steamboat application of impending Commission action is reasonably calculated to put parties on notice of that action and does not violate due process. Proof that actual delivery has been effected is not necessary for Commission action to be effective. RCW 81.84.020; Former WAC 480-08-060(4). Order S. B. C. No. 427, In re Delphia Virginia Browne, App. No. B-293. (December 1986).

### **Former WAC 480-08-060 (cont.)**

Filing and service are separately defined by Commission rules. A document is not "filed" until received by the Commission, while a document may be "served" by deposit into the U. S. mail, correctly addressed, with first class postage prepaid. Exceptions mailed on the last day for filing and not received until the next day, without a request for an extension of time for filing, are late-filed and may be stricken. Former WAC 480-08-010; Former WAC 480-08-060(3). Order M. V. No. 134858, In re Zeb F. Johnson, d/b/a All West Auto Transport, App. No. P-69380 (October 1986).

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If a certificate of service is not included with an exception, and a motion to strike is made, the Commission will not consider the exception. Former WAC 480-08-060(5). Order M. V. No. 133753, In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

Physical receipt of a served document is not a required element of service by the Commission. The Administrative Procedures Act provides that service may be perfected by mail. Commission rule provides that service is complete by the agency when deposited by the agency with the U. S. Postal Service, postage prepaid. Former RCW 34.04.120; Former WAC 480-08-060(3)(4). Order M. V. No. 133363, In re Seafair Moving & Transfer, Inc., App. No. P-69394 (February 1986).

Because the entry of an order on reconsideration might affect the interest of protestants, a petition for reconsideration should not be considered unless protestants have been served with the petition. Former RCW 34.04.120; Former WAC 480-08-060; Former WAC 480-08-250. Order M. V. No. 129473, In re LTI, Inc. d/b/a Milky Way, App. No. P-67741 (April 1984).

When a final Commission order is not served on an applicant's attorney at the time the order is entered, service and entry are not perfected until the attorney is served. Former WAC 480-08-060(4). Order M. V. No. 128635, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (October 1983).

A court rule that when service is by mail rather than by personal service twice the amount of time should be allowed for service, does not supersede the Commission's rules for service. Former WAC 480-08-060(3). Order M. V. No. 128635, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (October 1983).

Evidence not presented at hearing and not served on all parties is properly disregarded by a presiding officer. Former WAC 480-08-060(3)(5); Former WAC 480-08-190. Order S. B. C. No. 404, In re Lavina Longstaff d/b/a Sea Wolf Charters, App. No. B-282 (August 1983).

Exceptions not served on a party to the proceeding violate concepts of fundamental fairness, and will not be accepted for consideration. Former WAC 480-08-060; Former WAC 480-08-240. Order S. B. C. No. 404, In re Lavina M. Longstaff d/b/a Sea Wolf Charters, App. No. B-282 (August 1983).

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### **Former WAC 480-08-070 Intervention.**

A city and county with statutory concerns regarding waste disposal may demonstrate a public interest in seeing that the transportation of recyclable materials does not encroach upon their statutory duties. Such an interest renders a decision to allow intervention well within the procedural discretion of the presiding officer. Former WAC 480-08-070(3). Order M. V. No. 133753, In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

### **Former WAC 480-08-080 Appearances.**

An applicant's motion to reschedule a hearing at which applicant did not appear will be denied when the motion is filed a month after the hearing, when the protestants incurred costs of attending and being represented at the hearing, and when--upon dismissal of the application--applicant may refile immediately. Former WAC 480-08-080(2). Order M. V. No. 136203, In re Duane C. Shaffer, d/b/a Panhandle Mobile Home Service, App. No. E-19424 (July 1987).

An applicant who can show that a letter amending an application was handed to, and accepted by, Commission personnel--who failed to inform the Office of Administrative Hearings of the amendment--has demonstrated sufficient cause for his failure to appear at hearing and the matter should be reopened. Former WAC 480-08-080(2). Order M. V. No. 134039, In re Bill Hagara Jr. d/b/a Bill Hagara Jr. Trucking, App. No. P-69914 (May 1986); Order M. V. No. 134024, In re Don Hagara d/b/a Don Hagara Trucking, App. No. P-69915 (May 1986).

A party who files a protest to an application for common carrier authority, who does not appear at the hearing and is therefore dismissed, may not file exceptions to a grant of authority. A claim of a lack of notice of hearing will be denied when such a claim is uncorroborated and Commission files show that notice of hearing was mailed. Former WAC 480-08-080(2); WAC 480-12-045(5). Order M. V. No. 130049, In re Byron A. Gusa, Jr. d/b/a K & G Construction, App. No. P-67701 (July 1984).

### **Former WAC 480-08-110 Informal Settlements.**

The Commission encourages informal settlement of disputes. When all parties stipulate to the resolution of a private complaint, and the stipulation is consistent with the public interest, the Commission will enter a final order in accordance with the stipulation. Former RCW 34.04.090(4); Former WAC 480-08-110. Docket No. TC-2178, Yellow Cab/Pierce-King Cabulance, v. Human Services Dept., et al., (July 1989).

### **Former WAC 480-08-140 Hearings.**

Reopening upon a claim that no notice of hearing had been received is not appropriate when the file shows proof of service demonstrating prima facie that notice was sent to all contemporary certificate holders. A petitioner's mere contention that it was unable to discover that it had received notice is not sufficient to overcome a presumption that service was complete. RCW 81.04.210; RCW 81.84.020; Former WAC 480-08-140. Order S. B. C. No. 427, In re Delphia Virginia Browne, App. No. B-293 (December 1986).

### **Former WAC 480-08-150 Continuances.**

Lateness is not a mere technical defect that can be cured. The orderly administration of Commission business and the need for an end to proceedings require the Commission's observance of administrative



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deadlines. If an applicant needs additional time to comply with procedures, the rules provide a method for requesting an extension. Former WAC 480-08-150. Order M. V. No. 139291, In re Larry Trapp Trucking, Inc., App. No. E-19700 (March 1989).

Reconsideration of an oral ruling is within the discretion of the presiding officer, to be exercised reasonably. Former WAC 480-08-150. Order M. V. No. 138497, In re Benito Medelez, Jr., d/b/a Medelez Trucking, App. No. E-19680 (October 1988).

A denial of a motion for continuance based on the applicant's failure to request a continuance prior to the hearing or to state a good cause for that failure is within the discretion of the presiding officer. Former WAC 480-08-150. Order M. V. No. 138497, In re Benito Medelez, Jr., d/b/a Medelez Trucking, App. No. E-19680 (October 1988).

A presiding officer does not abuse discretion in granting a continuance when the grant does not cause hardship and does not deny the right to a hearing. Former WAC 480-08-150(1). Order M. V. No. 130721, In re Crosby & Overton, Inc., App. No. P-66968 (October 1984).

### **Former WAC 480-08-160 Stipulation as to facts.**

The Commission will not allow a party to recant stipulated facts incorporated into proposed findings without offering recommended findings and without presenting any reasons why the stipulation should not be accepted. Former WAC 480-08-160; WAC 480-09-470. In re Arrow Sanitary Service, Inc., d/b/a Oregon Paper Fiber, Cause No. TG-2197 (December 1989).

The Commission may accept exceptions agreed by all parties against a stipulated order, even though the order accurately reflects the stipulation, when the exceptions clarify or explain the underlying agreement in a material way. Former WAC 480-08-160. In re Washington Central Railroad Co., Inc., Cause No. TR-2141 (August 1988).

### **Former WAC 480-08-190 Rules of evidence.**

Subsections of former rule:

- (1) General.
- (2) Official notice.
- (3) Resolutions.

### **Cross References**

- < Review of Proposed Orders: See Former WAC 480-08-240.
- < Rules of Evidence: See also Former RCW 34.04.100.
- < Weight Given Proposed Order's Credibility Findings: See Former WAC 480-08-240 under "Review; Final Order."
- < **See Index for references to current procedural rules.**

### **Former WAC 480-08-190 (cont.)**

The Commission may exclude a late-filed exhibit for which the filing party failed to establish a purpose. Former RCW 34.04.100(1); Former WAC 480-08-190(1). Cause No. TG-2195, Clark County Disposal,

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Inc., d/b/a Vancouver Sanitary Service, et al., v. Environmental Waste Systems, Inc., et al. (October 1989).

All relevant evidence is admissible which in the opinion of the presiding officer is the best evidence reasonably obtainable. Billing invoices may be relevant evidence of activity under a permit in a transfer proceeding. Former WAC 480-08-190; WAC 480-12-050(4)(b). Order M. V. No. 139442, In re Materials & Transport, Inc./Ajax, Inc., App. No. P-72230 (May 1989).

A witness may sponsor business records into evidence without direct knowledge of every aspect of their contents. A foundation for admission of business records is provided if the witness can provide first-hand knowledge of the company's business practices and verify that the exhibits are from its regularly maintained business records. Former RCW 34.04.100; Former WAC 480-08-190; WAC 480-12-050. Order M. V. No. 139442, In re Materials & Transport, Inc./Ajax, Inc., App. No. P-72230 (May 1989).

All relevant evidence is admissible which in the opinion of the presiding officer is the best evidence reasonably obtainable. Testimony about need for service by a witness having an ownership interest in both an applicant and a supporting shipper may be relevant and therefore admissible. Former WAC 480-08-190(1). Order M. V. No. 139305, In re Ronald E. and Gerald H. Thompson and Bobby R. Godwin, d/b/a T & G Trucking Co., App. No. P-71366 (February 1989).

Evidence of activity under a permit subject to partial transfer, although not segregated by portions of the authority sought for transfer, will not be rejected when the exhibit is understandable in its present form and there is no discernable prejudice resulting from the failure to segregate the shipments. Former RCW 34.04.100; Former WAC 480-08-190; WAC 480-12-050(4). Order M. V. No. 136758, In re Bremerton Transfer & Storage Co., Ltd., d/b/a Olympic Freight Lines/Security Parcel Express, Inc., App. No. P-70737 (October 1987).

The taking of official notice of the fact of a penalty assessment may have little bearing upon the issues in a proceeding without information about the nature and circumstances of the violation and any mitigation. A request for such official notice made after the close of the record should be denied. Former WAC 480-08-190(2). Order M. V. No. 136729, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70454 (October 1987).

An applicant's possession of interstate authority may be relevant, and therefore admissible, in an application for intrastate authority when possession of the authority bears on the shipper's convenience. RCW 81.80.070; Former WAC 480-08-190. Order M. V. No. 136348, In re Jobbers Freight Service, Inc., App. No. E-19348 (August 1987).

### **Former WAC 480-08-190 (cont.)**

Evidence in a contested case will ordinarily be accepted only in an open hearing session where its proponent is subject to questioning and observation of demeanor. Former RCW 34.04.100; Former WAC 480-08-190. Order M. V. No. 133428, In re Dale Locke/Brader Hauling Service, Inc., App. No. P-68902 (February 1986).

The Commission will not consider evidence submitted by the protestant showing operations outside protestant's certificate authority. Former RCW 34.04.100; RCW 81.68.040; Former WAC 480-08-190. Order M. V. C. No. 1495, In re Pacific Northwest Transportation Services, Inc.; Bremerton-Kitsap Airporter, Inc. d/b/a The Sound Connection, Kitsap-Sea-Tac Airporter; Travel-lines, Inc., App. Nos. D-2468; D-2469; D-2473 (May 1985).

When the record is reopened to receive a certified map showing the relationship of service points to city limits, a map and affidavit may suffice for evidentiary purposes in this proceeding. Former RCW 34.04.100(1),(2); Former WAC 480-08-190(1). Order M. V. C. No. 1495, In re Pacific Northwest Transportation Services, Inc.; Bremerton-Kitsap Airporter, Inc., d/b/a The Sound Connection, Kitsap-Sea-Tac Airporter; Travelines, Inc., App. Nos. D-2468; D-2469; D-2473 (May 1985).

A post-hearing statement of support that demonstrates a need for another carrier may be considered when a grant of authority is adverse to no other party to the proceeding. RCW 81.80.070 (entry common carriers: need for service); Former WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 129068, In re John F. Mitchell, App. No. P-67157 (January 1984).

Evidence consisting of a chart purporting to show how other state Commissions decided similar issues, submitted after the hearing, will be stricken on two grounds: that the evidence is irrelevant, and that it was not presented at the hearing and was not subject to verification or cross-examination as required by statute. Former RCW 34.04.100(2), (9)(c); Former WAC 480-08-190(1); Former 480-08-240. Order M. V. No. 128995, In re United Parcel Service, Inc., App. No. E-18527 (January 1984).

When a clerical error creates the impression that a protest to an application has been dismissed and that written shipper support statements may verify a need for service, the Administrative Law Judge acts properly in refusing to consider statements submitted after the hearing in deciding the application. Elementary fairness requires that contesting parties have an opportunity to ask questions about evidence on contested issues, which must be submitted during the hearing. WAC 4809-08-190(1). Order M. V. No. 131224, In re Earl L. Moritz, App. No. P-67101 (December 1983).

Summaries of gross shipment quantities that are authenticated by a witness who was available for cross-examination, although not supported by underlying documentation, may be accepted into evidence. Former RCW 34.04.100; Former WAC 480-08-190. Order M. V. No. 126825, In re Lynden Transport, Inc., d/b/a Milky Way, Inc., App. No. E-18629 (November 1983).

When an unprotested portion of an application is separable from the balance of the application, the applicant may submit written shipper support statements for that portion upon leave of the Commission or its representative. RCW 81.80.070; Former WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 128671, In re Larry G. Gladsjo d/b/a L. G. Logging, App. No. P-67126 (October 1983).

**Former WAC 480-08-190 (cont.)**

When an evidentiary document not submitted at hearing is submitted and referenced in applicant's exceptions, the references and the document will be stricken upon a motion from the protestant. Former RCW 34.04.100(2); Former WAC 480-08-190(1). Order M. V. No. 128061, In re James D. Hanson d/b/a Earl Hanson Trucking Co., App. No. E-18676 (August 1983).

A bus company seeking to abandon routes must justify its use of revenue figures and the time periods

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chosen for developing those figures, and explain the company's analysis to demonstrate revenue loss and to satisfy the requirements of chapter 81.68 RCW and chapter 480-30 WAC. Former RCW 34.04.100; Former WAC 480-08-190; WAC 480-30-060(9). Order M. V. C. No. 1403, In re Greyhound Bus Lines, Inc., App. No. D-2442 (June 1983) (revised, MC-1515 Sub-No. 342 (1983)).

Written shipper statements may be received in support of unprotested authority. RCW 81.80.070 (entry common carriers: need for service); Former WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 127482, In re E-L Trucking Company, App. No. E-18720 (April 1983).

The Commission accepts the best evidence reasonably obtainable with due regard for necessity, availability, and trustworthiness. A supporting shipper must have sufficient information to present direct testimony on shipping problems and to submit to cross-examination. The testimony of a supporting witness will not necessarily be rejected because the witness does not have direct firsthand experience of all the information presented. Former RCW 34.04.100; Former WAC 480-08-190. Order M. V. No. 126468, In re Nello Pistoresi & Son, Inc., App. No. E-18629 (November 1982).

Testimony by a shipper is not bound strictly by rules of hearsay or best evidence in transportation hearings. The standard is whether the evidence offered is the best evidence reasonably obtainable having due regard to necessity, availability, and trustworthiness. If evidence was improperly excluded, the Commission--on its own motion--may remand to provide an applicant with the opportunity to present evidence. Former RCW 34.04.100(3); Former WAC 480-08-190(1). Order M. V. No. 126468, In re Nello Pistoresi & Son, Inc., App. No. E-18629 (November 1982).

A protestant's attempt to inject testimony from a prior hearing where the applicant was not a party, was not responsible for the statements made, and had no opportunity to explore the truth of the statements, is improper and unfair. Former RCW 34.04.100(3); Former WAC 480-08-190(1). Order M. V. No. 126442, In re United Drain Oil Service, Inc., App. No. P-65787 (October 1982).

When an amendment to an application results in a portion of an application being unprotested, but no provision is made for the submission of a verified shipper support statement, the ALJ does not abuse discretion in refusing to consider a statement submitted after the hearing. Former WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 126084, In re Tacoma Hauling Co., Inc., App. No. E-18498 (August 1982).

**Former WAC 480-08-240      Proposed orders by examiners [+ Exceptions; Final Orders].**

Subsections of former rule:

- |  |                                   |
|--|-----------------------------------|
| (1) General.                                   | (7) Replies--Who may file.        |
| (2) Preparation and service of proposed order. | (8) Replies--Time for filing.     |
| (3) Briefs to examiner.                        | (9) Replies--Contents.            |
| (4) Exceptions--Who may file.                  | (10) Time for filing--Variance.   |
| (5) Exceptions--Time for filing.               | (11) Briefs or written arguments. |
| (6) Exceptions--Contents.                      | (12) Oral argument.               |
|  | (13) Final decision.              |

**Cross References**

- < Documents Deemed Officially Received by Commission Only When Delivered: See Former WAC 480-08-010.
- < Withdrawal of Application After Proposed Order: See Former RCW 34.04.090.
- < **See Index for references to current procedural rules.**

**-- Preparation and service of proposed order; supplemental correcting order**

It is generally inappropriate to state a witness' opinion in a finding unless that opinion is relevant to an ultimate finding. Former RCW 34.04.100(1); Former WAC 480-08-240(1). Order M. V. G. No. 1367, In re Northwest Unitech, Inc., App. No. GA-864 (January 1989).

When an application is not protested, when the decision is adverse to no party to the proceeding and when the applicant waives a proposed order, the Commission may enter a final order without the prior entry of a proposed order by the presiding Administrative Law Judge. Former RCW 34.04.110; Former WAC 480-08-240. Order S. B. C. No. 444, Port Angeles Launch Service, App. No. B-301 (July 1988).

Service of a proposed order is not perfected when a party's attorney of record is not served with a copy of the order. Former RCW 34.04.110; Former WAC 480-08-240(2). Order M. V. No. 136787, In re Ronald H. Voight, d/b/a Voight Enterprises, App. No. P-70978 (October 1987).

A supplemental proposed order that is entered to correct an error in the appendix to a proposed order, but which does not change the result of the order, is a ministerial act and not a new exercise of discretion. Former RCW 34.04.090(2),(5); Former WAC 480-08-240(2). Order M. V. No. 131310, In re United Truck Lines, Inc., App. No. E-18895 (January 1985).

Unfairness that would constitute an infirmity in a proposed order, is not shown by facts indicating that the presiding officer retired after the hearing, entered private law practice, and shares an office with an attorney who has represented carriers in rate docket cases but who is not in any way connected with the application in question. RCW 34.12.050; Former WAC 480-08-240(2). Order M. V. No. 131310, In re United Truck Lines, Inc., App. No. E-18895 (January 1985).

**Former WAC 480-08-240 (cont.)**

## **Former Chapter 480-08 WAC**

A presiding officer who enters a proposed order after retiring from the Office of Administrative Hearings, is not incapacitated. Without a showing of how the retirement of the presiding officer causes error or injustice, the applicant does not overcome the presumption that the officer proceeded in a lawful manner. RCW 34.12.050; Former WAC 480-08-240(2). Order M. V. No. 131310, In re United Truck Lines, Inc., App. No. E-18895 (January 1985).

A clerical error in a proposed order may be corrected by a supplemental proposed order entered within the time period for receiving exceptions, if no procedural or substantive harm to a party will result. Former WAC 480-08-240(2). Order M. V. No. 128898, In re Donald E. Goble d/b/a Donald E. Goble Trucking, App. No. P-67101 (December 1983).

When a presiding officer leaves the employ of the Commission after a hearing but before writing a proposed order, reassignment of the matter to another Administrative Law Judge for preparation of a proposed order is specifically authorized. Former WAC 480-08-240(2). Order M. V. No. 126429, In re Glenn Mar, Inc., App. No. P-65982 (November 1982).

### **-- Exceptions--Who may file**

Any party may file exceptions to a proposed (initial) order. Former WAC 480-08-240(5). Cause No. TG-2195, Clark County Disposal, Inc., d/b/a Vancouver Sanitary Service et al., v. Environmental Waste Systems, Inc., et al. (October 1989).

### **-- Exceptions--Time for filing; Service**

A letter that was filed more than three weeks after time for filing exceptions closed, that was not served on all parties of record, and that was not in the form required by the regulation, does not constitute an exception for purposes of consideration by the Commission. WAC 48-08-240(5)(6). Order M. V. No. 139671, In re Centennial Contractors, Inc., App. No. P-72174 (May 1989).

The Commission requires strict compliance with filing deadlines. Exceptions filed a day late will be rejected. Former WAC 480-08-240(5). Order M. V. No. 138131, In re Punctual Transportation, Inc., App. No. P-71023 (August 1988).

Exceptions not timely filed will be rejected by the Commission. Former WAC 480-08-240(5). Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

A document filed to supplement exceptions after the period for filing exceptions has closed, without leave for its submission, will be stricken. Former WAC 480-08-240(5). Order M. V. No. 136658, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70608 (September 1987).

A document submitted after the close of the exception period, which presents evidence not unavailable at the time of hearing and which was not served on all parties of record, does not meet minimum procedural requirements and the Commission will reject it. Former WAC 480-08-240(5)(6). Order M. V. No. 133945, In re August E. Huwaldt d/b/a A. E. Huwaldt, App. No. P-69440 (May 1986).

### **Former WAC 480-08-240 (cont.)**

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Exceptions to a final order entered one year prior to the proposed order now at issue, with new arguments that were not presented in a petition for reconsideration of that previous order, are neither timely filed nor procedurally appropriate, and will not be accepted by the Commission. Former WAC 480-08-240(5). Order M. V. No. 128696, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1983).

Exceptions filed late, with no previous request for extension, will be rejected. Former WAC 480-08-240(5). Order M. V. No. 128635, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (October 1983).

Exceptions received one day after the last day for filing are untimely filed and should be rejected. WAC 480-08-240. Order M. V. No. 128635, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (October 1983).

Failure to serve exceptions upon an intervenor violates fundamental fairness, and they will not be accepted for consideration. Former WAC 480-08-060; Former WAC 480-08-240(5). Order S. B. C. No. 404, In re Lavina M. Longstaff d/b/a Sea Wolf Charters, App. No. B-282 (August 1983).

A letter to the Commission that objects to a proposed order must comply with the requirement that a copy be sent to each party in order to be considered properly filed as an exception. Former WAC 480-08-240(5). Order M. V. No. 127915, In re Robert C. Wolford d/b/a Bobby Wolford Trucking & Salvage, App. No. E-18683 (July 1983).

The Commission will strike a document entitled "Petition for Reconsideration"--outlining the applicant's exceptions to the proposed order--which is submitted after the time for filing exceptions, for failure to comply with Commission rules. Former WAC 480-08-240(5). Order M. V. No. 126468, In re Nello Pistoresi & Son, Inc., App. No. E-18629 (November 1982).

### **-- Exceptions--Contents; Liberal construction**

Exceptions which contain a general request for review of a proposed order, which clearly state the relief desired, which clearly identify the issues raised and supporting reasoning, which are timely filed and properly served, and which prejudice no other party, will not be stricken, even if they are not separately numbered and do not cite to the record as required by rule. Former WAC 480-08-240(6). Order M. V. No. 140304, In re Joseph F. Saccomanno, d/b/a Craig Transfer & Storage Co., Inc., App. No. P-72429 (October 1989).

When evidence of public convenience and necessity is alleged to be substantially changed from that presented at the hearing, a new application is the proper forum for developing that evidence. Generally, reopening or rehearing under this circumstance is not appropriate. RCW 81.80.070; Former WAC 480-08-250(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

### **Former WAC 480-08-240 (cont.)**

Ordinary business developments or changes in the economic environment do not generally form a basis for

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rehearing. A petition for rehearing should show changed circumstances or injurious results not anticipated by the Commission at the time of entry of the final order. Former WAC 480-08-250(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

A "petition for reinstatement" that is filed outside of the time required by rule, and which does not state grounds for rehearing, does not state a basis for relief and will be denied. Former WAC 480-08-250(1); WAC 480-12-065. Order M. V. No. 139930, In re Richard B. Morris (July 1989).

The Commission's failure to consider an amended contract submitted after the close of the hearing will not warrant rehearing if consideration of the amended contract would not change the result of the order. Former WAC 480-08-250; WAC 480-09-820. Order M. V. No. 139227, In re Parker Refrigerated Service, Inc., App. No. P-71514 (March 1989).

A bankruptcy action filed by a protestant after the hearing will not justify rehearing the application when the action would not affect the result of the order. Former WAC 480-08-250. Order M. V. No. 139227, In re Parker Refrigerated Service, Inc., App. No. P-71514 (March 1989).

A petitioner for rehearing must support its request by showing changed circumstances or injurious results not anticipated by the Commission at the time of entry of an order. Former WAC 480-08-250. Order M. V. No. 139215, In re United Couriers, Inc., App. No. E-19645 (March 1989).

Late exceptions that do not challenge any finding or conclusion of a proposed order but rather seek to amend the original application will be rejected, since they seek changes that would require redocketing and hearing or renegotiation of protestants' withdrawals. Former WAC 480-08-240(6); WAC 480-12-045. Order M. V. No. 138366, In re Ken H. Sublie, d/b/a Sublie's Logging & Equipment Repair, App. No. P-71813 (September 1988).

General allegations of error in findings of fact, without citation of specific instances in the record, may be insufficient to base a challenge when there is sufficient evidence to support the findings. Former WAC 480-08-240(6). Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

The Commission will liberally construe all pleadings when doing so does not affect the substantial rights of the parties. An exception that is timely filed, cites to the record, and clearly states the desire of the pleader will not be rejected when no prejudice to other parties is shown. Former WAC 480-08-240(6). Order M. V. No. 137819, In re Craig J. Elliott, d/b/a TLC Moving & Storage, App. No. E-19421 (June 1988).

Exceptions that do not totally comply with Former WAC 480-08-240(6) but that clearly and understandably set forth challenges to the proposed order will be liberally construed pursuant to Former WAC 480-08-050(6). Order M. V. No. 137626, In re Robert L. Johnson, d/b/a Postal Express, App. No. P-71118 (May 1988).

### **Former WAC 480-08-240 (cont.)**

Evidence available at the time of the hearing will not be considered when submitted for the first time in the applicant's exceptions. Former WAC 480-08-240(6),(13). Order M. V. No. 137392, In re Ronald H. Voight, d/b/a Voight Enterprises, App. No. P-70978 (March 1988).



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Although they do not cite to specific portions of the record, exceptions which clearly state a party's objections to a proposed order and the result desired by the exceptor and which prejudice no other party to a proceeding will not be stricken. Former WAC 480-08-240. Order M. V. No. 137346, In re Smith Transport, Inc., App. No. P-71155 (February 1988).

The Commission will liberally construe pleadings and similar documents and disregard defects that do not affect the substantial rights of parties. Exceptions that fail to include proposed findings of fact, but that are timely filed, served on all parties of record, cite to the record, and clearly specify what the exceptor desires, will be accepted. Former WAC 480-08-050; Former WAC 480-08-240. Order M. V. No. 136658, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70608 (September 1987).

The Commission may not consider new evidence included in the applicant's exceptions. Former WAC 480-08-240(6),(13). Order M. V. No. 135494, In re Earl R. Curry d/b/a Empire Construction/Peter D. & Mark Kelly, d/b/a Kelly Dozing & Aggregate, App. No. P-70598 (March 1987).

A petition for rehearing of a proposed order is procedurally incorrect because there is no final order by which the petitioner may be aggrieved. Although the petition must be denied, the Commission may consider, as exceptions, the petitioner's arguments. RCW 81.04.200; Former WAC 480-08-250(6). Order S. B. C. No. 427, In re Delphia Virginia Browne, App. No. B-293 (December 1986).

Exceptions that simply disagree with the proposed order, without citation to the record or to law, fail to meet minimum standards and make no case for the position stated. Former RCW 34.04.090(7); Former RCW 34.04.110; Former WAC 480-08-240(6). Cause TR-1907, City of Mount Vernon v. Burlington Northern Railroad Company (November 1986).

Evidence in a contested case will ordinarily be accepted only in an open hearing session where the witness is subject to questioning and observation of demeanor. Affidavits offered as appendices to exceptions, without a motion to reopen and a showing that reopening to receive new evidence is appropriate, are subject to a motion to strike. Former RCW 34.04.100; Former WAC 480-08-190; Former WAC 480-08-240. Order M. V. No. 133428, In re Dale Locke/Brader Hauling Service, Inc., App. No. P-68902 (February 1986).

The Commission limits its consideration to facts of record. It will not consider an exception that cites facts not evident in the record. Former WAC 480-08-240(6). Order M. V. No. 133106, In re E.B.P. Inc., d/b/a Valley Moving and Storage/Larry L. Biggs d/b/a Valley Moving and Storage of Spokane, App. No. P-68909 (January 1986).

If no other party objects, a county may incorporate in its exceptions citizens' comments against a proposed order closing a railroad crossing. Former WAC 480-08-240(6). Cause No. TR-1725; TR-1726, Whatcom County v. Burlington Northern Railroad, Inc., (January 1985).

### **Former WAC 480-08-240 (cont.)**

Exceptions that offer evidence after the close of the hearing will be rejected. Acceptance of post-hearing allegations as fact would be unfair because other parties to the proceedings would not have the opportunity to cross-examine the witness about the circumstances of the asserted incident. Former RCW 34.04.100(3); Former WAC 480-08-240(6). Order M. V. No. 129593, In re Richard T. Kassuhn, d/b/a R & R Trucking,

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App. No. P-67498 (April 1984).

The proponent of an exception has the burden of showing that a proposed order's finding is unsupported by the evidence. Exceptions asserting that unattended trailers would be safer at a site rejected under the proposed order, without citing any evidence of greater safety elsewhere, will be denied. Former RCW 34.04.100(1); Former WAC 480-08-240(6). Order M. V. No. 129374, In re Henry E. Ford, d/b/a Mobile Home Specialists, App. No. E-18870 (March 1984).

Evidence consisting of a chart purporting to show how other state Commissions decided similar issues, submitted after the hearing, will be stricken on two grounds: that the evidence is irrelevant, and that it was not presented at the hearing and was not subject to verification or cross-examination as required by statute. Former RCW 34.04.100(2), (9)(c); Former WAC 480-08-190(1); Former 480-08-240. Order M. V. No. 128995, In re United Parcel Service, Inc., App. No. E-18527 (January 1984).

When the parties do not undertake to clarify an amendment on the record, but the presiding officer reads his understanding of the amendment into the record, there is no basis for an exception to a grant of authority consistent with the presiding officer's stated understanding of the amended application. Former WAC 480-08-240(6); WAC 480-12-045(5)(6). Order M. V. No. 128741, In re Nello Pistoresi & Son, Inc., App. No. E-18681 (November 1983).

A document that fails to identify itself as an exception to a proposed order, that is not submitted with the required number of copies, that does not state specific objections to findings of fact or conclusions of law of the proposed order or state applicant's alternatives, and that cites information not presented as evidence during the hearing, should be rejected. RCW 480-08-240(6). Order M. V. No. 127129 In re Don Mumma Trucking, App. No. E-18665 (February 1983).

Information cited in exceptions that does not appear in the record of the hearing will not be considered by the Commission. The hearing is the place where evidence must be produced. Former RCW 34.04.100(2); Former WAC 480-08-240. Order M. V. No. 126351, In re Bill N. Sheely, App. No. E-18621 (September 1982).

### **-- Replies to exceptions--Contents**

When the result of a proposed order is acceptable to a party, it need not file exception to those portions of the order with which it disagrees. If exceptions are filed, the party may in its answer raise objections to those portions of the order disagreed with. Former WAC 480-08-240(9). Order M. V. No. 130795, In re Amalgamated Services, Inc., App. No. P-66826 (October 1984).

### **Former WAC 480-08-240 (cont.)**

### **-- Replies to exceptions--Time for filing**

The Commission requires strict compliance with the periods for filing pleadings. Pleadings filed late, without a prior grant of an extension of the filing period, will be disregarded. Former WAC 480-08-240(8). Order M. V. No. 137819, In re Craig J. Elliott, d/b/a TLC Moving & Storage, App. No. E-19421 (June

1988).

Absent special circumstances, the submission of two documents by two different sources on behalf of a single party is irregular. If one of those two documents is filed late, the Commission will reject the untimely filing. Former WAC 480-08-240(8). Order M. V. No. 127558, In re Jon S. Pansie d/b/a Tri-Pan Services, App. No. P-65704 (May 1983).

**-- Oral argument**

The Commission has discretion to grant or deny requests for oral argument; it will ordinarily deny such requests unless it believes or is shown that the argument will add substantially to its understanding of the issues and the positions of the parties. Former WAC 480-08-240(12). Order M. V. No. 138750, In re Randy and Denise Cooper and John and Kelly Port, d/b/a Central Washington Mobile Home Transport and Services, App. No. E-19540 (December 1988).

Oral argument will be granted on reconsideration only upon a showing that it will aid the Commission in reaching a decision or that the absence of oral argument will be detrimental to the petitioner. Former WAC 480-08-240(12); Former WAC 480-08-250. Order M. V. No. 134938, In re Inland Empire Distribution Systems, Inc., App. No. P-69280 (October 1986).

The Commission may grant oral argument on exceptions to proposed orders, if the proponent shows that oral argument will contribute to the understanding of the issues in a way not met by written submissions. Former WAC 480-08-240(12). Order M. V. No. 129300, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (February 1984).

Oral argument is available as part of the post-hearing process in the discretion of the Commission. A request for oral argument that does not show an advantage to Commissioners in evaluating the record, or a benefit to the parties, will be denied. Former WAC 480-08-240(12). Order M. V. No. 128995, In re United Parcel Service, Inc., App. No. E-17526 (January 1984).

**Former WAC 480-08-240 (cont.)**

**-- Review; Final decision**

Exceptions to a proposed order, challenging the findings, will be denied if the findings are supported by sufficient credible evidence. Former WAC 480-08-240(13).

Order M. V. No. 137791, In re William D. Dorn, d/b/a Bill Dorn Trucking, App. No. E-19500

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Order M. V. No. 136690, In re West Coast Truck Lines, Inc./Dave Williams Logging, Inc., App. No. P-70682 (October 1987).

Order M. V. No. 136135, In re Sorenson Transportation Co., Inc., App. No. P-69680 (July 1987).

Order M. V. No. 134592, In re Trimac Transportation Services (Western), Inc., App. No. P-69768 (August 1986).

Order M. V. No. 131718, In re Dennis L. Palmer d/b/a Palmer Freight Lines, App. No. E-18989 (April 1985).

When a finding of the proposed order does not accurately reflect the record, the Commission will correct the finding. Former WAC 480-08-240(13).

Order M. V. No. 136658, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70608 (September 1987).

Order M. V. No. 131238, In re Elmer Cook Trucking, Inc., App. No. E-19000 (January 1985).

Order M. V. No. 126857, In re Michael, Patrick, and William Devries/Jim's Transfer, Inc., App. No. P-66231 (January 1983).

Order M. V. No. 126429, In re Glenn Mar, Inc., App. No. P-65982 (November 1982).

The Commission must decide each application based upon the evidence presented in that application. The findings based on the evidence in one proceeding have no bearing upon findings based on evidence that is presented in another proceeding involving a different applicant. Former RCW 34.04.120; Former WAC 480-08-240(13).

Order M. V. G. No. 1367, In re Northwest Unitech, Inc., App. No. GA-864 (January 1989).

Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

The presiding officer is the best person to assess a witness's credibility, and a presiding officer's assessment that a witness's testimony is credible will not be disturbed in the absence of objective evidence to the contrary. Former WAC 480-08-240.

Order M. V. No. 137927, In re Gordon Trucking, Inc., App. No. E-19530 (September 1988).

Order M. V. No. 137626, In re Robert L. Johnson, d/b/a Postal Express, App. No. P-71118 (May 1988).

Order M. V. G. No. 1264, In re Lawson Disposal, Inc., App. No. GA-824 (January 1987).

### **Former WAC 480-08-240 (cont.)**

When the appendix would grant broader or different authority than that properly found necessary and proposed for grant by the proposed order, an apparent clerical error has occurred, and the Commission will correct the appendix in the final order. Former WAC 480-08-240(13).

Order M. V. No. 134592, In re Trimac Transportation Services (Western), Inc., App. No. P-69768 (August 1986).

Order M. V. No. 134158, In re Albertson Trucking, Inc., App. No. E-19276 (June 1986).

Order M. V. No. 133329, In re James J. Balderson Trucking, Inc., App. No. P-68578 (January 1986).

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The administrative law judge is in the best position to observe the demeanor of all the witnesses. The initial findings of fact are given considerable weight on review and will not be disturbed if supported by sufficient evidence. Former WAC 480-08-240(13). Order M. V. No. 140431, In re Ell Transport, Inc., App. No. E-19683 (October 1989).

A proposed order's specific finding of the applicant's credible assurance of future compliance supported by substantial evidence on the record, will not be disturbed on review. Former RCW 34.04.110; RCW 81.80.070 (entry common carriers; fitness); Former WAC 480-08-240(13). Order M. V. No. 139688, In re Elmer Cook Trucking, Inc., App. No. E-19682 (June 1989).

A proposed order need not contain findings that are irrelevant. Unless an application is being denied upon public interest grounds, an order denying common carrier authority need not include a specific finding that the grant of the additional common carrier authority will harm the transportation facilities of the state. Former RCW 34.04.120; Former WAC 480-08-240. Order M. V. No. 139284, In re Tom Dyksterhuis, d/b/a Valley Molasses Co., App. No. P-71984 (March 1989).

The Commission may delete a proposed finding of fact that is inaccurate, although no party excepted to it, if its deletion does not affect the result and prejudices no party. Former WAC 480-08-240(13). Order M. V. No. 139068, In re Gene Peterson, App. No. P-71497 (February 1989).

When an assistant attorney general files "exceptions" to a proposed order, urging the Commission to affirm the proposed order's rejection of the applicant's tariff filing but requesting correction of several findings of fact, and when no opposition to the exceptions has been filed, the Commission will treat them as uncontested corrections and will make the changes as requested. Former WAC 480-08-240. WUTC v. Skamania County Sanitary Service, Inc., Cause No. TG-2170 (September 1988).

The Commission may review proposed orders on its own motion in order to resolve significant questions of public interest. Matters of general interest, thoroughly argued and constituting actual controversies, are appropriate for Commission consideration. Former WAC 480-08-240(13). Order M. V. No. 138131, In re Punctual Transportation, Inc., App. No. P-71023 (August 1988).

### **Former WAC 480-08-240 (cont.)**

General allegations of error in findings of fact, without citation of specific instances in the record, may be insufficient to base a challenge when there is sufficient evidence to support the findings. Former WAC 480-08-240(6). Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

Allusions to error, impressions of grave consequences and little testimony of record are insufficient to reverse a proposed order when there is sufficient evidence to support proposed findings. Former WAC 480-08-240(13). Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

When there is substantial evidence of record to support proposed findings of fact, and when testimony is

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deemed credible by the presiding officer, the findings will be given substantial weight by the Commission. Former WAC 480-08-240. Order M. V. G. No. 1335, In re Superior Refuse Removal Corporation, App. No. GA-849 (June 1988).

When a proposed order shows inconsistencies between the memorandum portion of the order and the findings of fact, the Commission may return the record and file to the presiding officer for entry of a corrected proposed order. Former WAC 480-08-240(13). Order M. V. No. 137807, In re Gene Peterson, App. No. P-71497 (May 1988).

Evidence available at the time of the hearing will not be considered when submitted for the first time in the applicant's exceptions. Former WAC 480-08-240(6),(13). Order M. V. No. 137392, In re Ronald H. Voight, d/b/a Voight Enterprises, App. No. P-70978 (March 1988).

In an application for common carrier authority a grant is justified when there is sufficient evidence that additional common carriage is needed. RCW 81.80.070 (entry common carriers: need for service); Former WAC 480-08-240(13). Order M. V. No. 137248, In re Jobbers Freight Service, Inc., App. No. E-19348 (February 1988).

The presiding officer is the best person to assess witnesses' credibility; when a finding indicates that the presiding officer believed one version of a set of circumstances over another version, the Commission will not change the finding absent substantial evidence to the contrary. Former WAC 480-08-240(13). Order M. V. No. 137090, In re Midland Transportation, Inc., App. No. E-19471 (December 1987).

Embellishments or expansions of proposed findings are not necessary when such additions would have no operative significance and when the existing findings are supported by substantial evidence. Former WAC 480-08-240(13). Order M. V. No. 137090, In re Midland Transportation, Inc., App. No. E-19471 (December 1987).

A finding that an applicant is unfit to operate as a contract carrier will be adopted when supported by substantial evidence. RCW 81.80.070; Former WAC 480-08-240(13). Order M. V. No. 137088, In re Roy N. Carlson, Inc., App. No. P-70991 (December 1987).

### **Former WAC 480-08-240 (cont.)**

When a protestant's authority is insufficient to meet the needs of many of the supporting shippers, such a fact is relevant to a proceeding and should be included in the findings. Former RCW 34.04.090; Former WAC 480-08-240(13). Order M. V. No. 136729, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70454 (October 1987).

An order need not recite as a found fact, every bit of information to which a witness testifies. A finding is sufficient if it deals with all dispositive issues and is supported by the evidence. Former RCW 34.04.090; Former WAC 480-08-240(13). Order M. V. No. 136729, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70454 (October 1987).

Ex parte action is not a matter of right after protests to an application have been withdrawn. The Commission may, in its discretion, order a hearing whether or not an application is protested. RCW 81.80.070 (entry common carriers: ex parte); Former WAC 480-08-240(13); WAC 480-12-045. Order M.

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V. No. 136789, In re Roy N. Carlson, Inc., App. No. P-70991 (October 1987).

Findings of Fact are not required in a final order on a question that is not an issue in the proceeding. Former RCW 34.04.090; Former WAC 480-08-240(13); Former WAC 480-08-250. Order M. V. No. 136858, In re United Couriers Northwest, Inc., App. No. P-70574 (October 1987).

A Finding of Fact that correctly reflects the record will be adopted. Former RCW 34.04.090; Former WAC 480-08-240(13). Order M. V. CH. No. 1240, In re Gazelle Enterprises, Inc., d/b/a Gazelle Charter Lines, App. No. CHA-264 (August 1987).

The Commission on review may accept stipulated factual changes from a proposed order. Former WAC 480-08-240(13). Order M. V. CH. No. 1240, In re Gazelle Enterprises, Inc., d/b/a Gazelle Charter Lines, App. No. CHA-264 (August 1987).

When the evidence fails to demonstrate that the Federal Reserve Bank of San Francisco is an agency of the federal government, constitutionally entitled to exercise preemption of transportation entry requirements, the Commission will not find that it is such an agency. Former WAC 480-08-240(13). Order M. V. No. 136237, In re United Couriers Northwest, Inc., App. No. P-70574 (July 1987).

Unsupported hearsay evidence, submitted outside the record, may not be considered by the Commission. Former WAC 480-08-240(13). Order M. V. No. 135599, In re Larry H. Montgomery, App. No. E-19343 (March 1987).

The Commission may not consider new evidence included in the applicant's exceptions. Former WAC 480-08-240(6),(13). Order M. V. No. 135494, In re Earl R. Curry d/b/a Empire Construction/Peter D. & Mark Kelly, d/b/a Kelly Dozing & Aggregate, App. No. P-70598 (March 1987).

When there is conflicting testimony, the presiding officer is the best person to assess witnesses' credibility. Former WAC 480-08-240. Order M. V. G. No. 1264, In re Lawson Disposal, Inc., App. No. GA-824 (January 1987).

### **Former WAC 480-08-240 (cont.)**

Factors having no effect on the outcome of an order need not be specifically considered. Exceptions based on the failure of a proposed order to discuss how the grant of authority would effect the applicant and the supporting shipper will be denied when these factors would cause no change in either the applicant's or the shipper's situation. Former WAC 480-08-240(13). Order M. V. No. 134850, In re Karen K. Urban, d/ba/ Rush Delivery Service, App. No. E-19255 (October 1986).

The Commission will correct a grant of authority upon final order to better conform to the need shown. When the witnesses for an applicant emphasize a certain type of equipment but support a need for all types of equipment, and the proposed order grants only authority for use of the emphasized type equipment, the Commission will correct the grant of authority on final order. Former WAC 480-08-240. Order M. V. No. 134162, In re Kenneth L. Waller, App. No. P-70068 (June 1986).

When the proposed order inadvertently grants more authority than was sought at hearing, the Commission will restrict the grant of authority to reflect the authority actually sought. Former WAC 480-08-240(13).

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Order M. V. No. 133916, In re K & L Trucking Company, App. No. P-69856 (May 1986).

Due process requires that the one who decides must hear the evidence, whether through personal participation or through review of the record made before other authorized personnel. Former RCW 34.04.090(7); RCW 81.04.120; Former WAC 480-08-240(13). In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

An Administrative Law Judge who has seen and heard the evidence may best judge the credibility of the witness and exercise the discretion to assign less weight to evidence given by an agent of the applicant. Former WAC 480-08-240(13). Order M. V. No. 133838, In re Inland Empire Distribution Systems, Inc., App. No. P-69280 (April 1986).

If the record contains evidence that applicant's personal financial strength is sufficient to maintain operations, and the proposed order so finds, exceptions to the finding of financial fitness--based upon the carrier's proposal to finance the purchase of the corporation's stock from the corporate earnings--will be denied. RCW 81.80.070 (financial fitness); Former WAC 480-08-240(13); WAC 480-12-050(4)(a). Order M. V. No. 133428, In re Dale Locke/Brader Hauling Service, Inc., App. No. P-68902 (February 1986).

An order must be considered as a whole and when specific reference to preliminary findings is made in the summary of ultimate findings, the referred material is incorporated into the ultimate finding. Former WAC 480-08-240(13). Cause TC-1747 Pacific Northwest Transportation Services, Inc. v. KOCO (April 1985).

The mere act of affirming a proposed order to which no exceptions have been taken, without a discussion of the issues therein, does not indicate an intention by the Commission to adopt the policies stated in the proposed order. Former RCW 34.04.110; Former WAC 480-08-240(13). Order M. V. G. No. 1185, In re Snoking Garbage Co., Inc., R.S.T. Disposal Co., Inc., App. No. GA-788 (November 1984).

### **Former WAC 480-08-240 (cont.)**

A determination of an applicant's good faith will be based on objective facts. When the evidence of an applicant's good faith is ambiguous, the Commission will place substantial reliance on the determination made by the presiding officer. RCW 81.80.070; Former WAC 480-08-240(13). Order M. V. No. 130795, In re Amalgamated Services, Inc., App. No. P-66826 (November 1984).

When the findings of fact and conclusions of law are supported by substantial evidence and resolve all determinative issues, exceptions alleging that the presiding officer did not consider all the testimony and that the findings of fact are insufficient to support a grant of partial authority will be denied. Former RCW 34.04.110; Former WAC 480-08-240. Order M. V. No. 130688, In re Earl Burton Marsh d/b/a Earl Marsh, App. No. P-68008 (November 1984).

When an error in a final order is corrected in a subsequent Commission order, the time for filing a petition for reconsideration runs from the date of the correcting order. Former RCW 81.04.165; Former WAC 480-08-240(13). Order M. V. No. 130126, In re T & T Milk Transport, Inc., App. No. E-18817 (August 1984).

The Commission may, on its own motion, reverse a proposed order that denies a waiver of WAC 480-12-085 when there is evidence of record that the waiver is consistent with the public interest. Former WAC 480-08-240(13). Order M. V. No. 127397, In re Ray Gimlin d/b/a Beaver Falls Trucking, App. No. E-18697 (April 1984).



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When a proposed order inadvertently grants a waiver of WAC 480-12-085, when such a waiver is unnecessary under the rule, the Commission may correct the error. Former WAC 480-08-240(13). Order M. V. No. 129470, In re The Nestaval Corporation, App. No. P-67706 (April 1984).

Those items incorporated by reference from the memorandum portion of the proposed order need not be explicitly stated in the order portion of a final order to be valid. Former WAC 480-08-240(13). Order M. V. No. 1422, In re Tacoma Suburban Lines, Inc., App. No. D-2408 (April 1984).

Reliance on a substantive portion of a proposed order is misplaced, unless and until the proposed order is affirmed by the Commission in its final order. Former RCW 34.04.110; Former WAC 480-08-240(13). Order M. V. No. 128898, In re Donald E. Goble d/b/a Donald E. Goble Trucking, App. No. P-67101 (December 1983).

An initial order's determination that a witness' statement of intention to operate lawfully is not credible, linked with evidence of continuing willful, flagrant, and knowing violation of regulation, provides no basis for a finding that the applicant is fit to conduct operations. Former WAC 480-08-240. Order M. V. CH. No. 995, In re O'Connor Limousine Service, Inc., App. No. CHA-199 (November 1983).

When a superior court has remanded a case for review of an applicant's fitness, the Commission may examine both the record of the first hearing and the record of the hearing on remand. Former RCW 34.04.110; Former WAC 480-08-240(13). Order M. V. CH. No. 995, In re O'Connor Limousine Service, Inc., App. No. CHA-199 (November 1983).

### **Former WAC 480-08-240 (cont.)**

A determination of the extent to which a transferor held himself out to do business, 19 years past, is one of fact depending largely on the credibility of the witness; and when there is substantial evidence to support a proposed order's finding on the evidence, the finding will not be disturbed. Former WAC 480-08-240(13); WAC 480-12-050(4). Order M. V. No. 128063, In re Paul & Randal Savage/Golden Grain Trucking Co., App. No. P-66336 (August 1983).

In an unprotested application the Commission may on its own motion review a proceeding and modify a proposed order. Former WAC 480-08-240(13). Order M. V. No. 128260, In re City Moving Systems, Inc., App. No. P-67070 (August 1983).

The Commission may review questions raised by a deficient exception in order to prevent a possible miscarriage of justice. Former WAC 480-08-240(13). Order M. V. No. 127915, In re Robert C. Wolford d/b/a Bobby Wolford Trucking and Salvage, App. No. E-18683 (July 1983).

If it appears that the presiding officer misapplied the Commission's standard, the Commission may review the entire record on its own motion and properly apply the standard. Former WAC 480-08-240(13). Order M. V. No. 127397, In re Ray Gimlin d/b/a Beaver Falls Trucking, App. No. E-18697 (April 1983).

A grant of authority that is inconsistent with the findings and conclusions will be corrected to be consistent with them. Former WAC 480-08-240(13). Order M. V. No. 127249, In re Albert P. Ulrich, App. No. E-18668 (April 1983).

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When a proposed order inadvertently deletes a portion of the carrier's present authority from a proposed revised permit, the Commission will restore the authority in the permit issued. Former WAC 480-08-240(13). Order M. V. No. 127482, In re E. L. Trucking Company, App. No. E-18720 (April 1983).

On review of proposed orders, the Commission will consider the whole of the record. Former WAC 480-08-240. Order M. V. No. 126429, In re Glenn Mar, Inc., App. No. P-65982 (November 1982).

When findings of fact and conclusions of law reveal a clerical error in the proposed order, the Commission will correct the error. Former WAC 480-08-240(13). Order M. V. No. 126370, In re Jim's Water Service, Inc., App. No. P-66065 (October 1982).

It is the responsibility of the Commission to exercise its own judgment on facts presented at hearing, but when there is substantial evidence to support the findings of a proposed order, they should not be lightly overturned. Former RCW 34.04.110; Former WAC 480-08-240(13). Order M. V. No. 126090, In re Brown Line, Inc., App. No. E-18461 (September 1982).

It is the responsibility of the proponent of an exception to demonstrate its significance. Assignments of error addressed to matters that can have no bearing on the outcome of the proceeding need not be accepted by the Commission. Former WAC 480-08-240. Order M. V. No. 126090, In re Brown Line, Inc., App. No. E-18461 (September 1982).

**Former WAC 480-08-240 (cont.)**

When a proposed order's finding incorrectly states a lack of shipper support for local cartage authority, the Commission will correct the finding and grant the authority in the final order. Former RCW 34.04.120; RCW 81.80.070 (entry common carriers: need for service); Former WAC 480-08-240(13). Order M. V. No. 131238, In re Elmer Cook Trucking, Inc., App. No. E-18581 (August 1982).

**Former WAC 480-08-250 Rehearing or reconsideration. [and reopening on reconsideration]**

Subsections of former rule:

- (1) General.
- (2) Contents.
- (3) Amendment of rescission of orders or rules.

**Cross References**

- < Time for Filing Petition for Rehearing: See RCW 81.04.200.
- < Time for filing Petition for Reconsideration: See Former RCW 81.04.165 for cases prior to 1986 repeal.
- < Reopening to Contest Dismissal After Failing to Appear at Hearing: See WAC 480-09-700.
- < Reopening After Proposed Order: See Former WAC 480-08-050.
- < **See Index for references to current procedural rules.**

**-- Rehearing**

A petition for rehearing of a proposed order is procedurally incorrect because there is no final order by which the petitioner may be aggrieved. The petition must be denied; however, the Commission may consider, as exceptions, the arguments made by the petitioner. RCW 81.04.200; Former WAC 480-08-250(6). Order S. B. C. No. 427, In re Delphia Virginia Browne, App. No. B-293 (December 1986).

The Commission may consider the arguments raised by a deficient petition for rehearing when the matters are of general interest. RCW 81.04.200; Former WAC 480-08-250. Order S. B. C. No. 427, In re Delphia Virginia Browne, App. No. B-293 (December 1986).

Changed circumstances that would provide a basis for rehearing are not shown by the fact that a carrier who served the supporting shipper at the time of hearing has since ceased serving that shipper. Reopening would not provide an opportunity for all present carriers to participate in a full airing of the circumstances. RCW 81.04.200; Former WAC 480-08-250. Order M. V. No. 134610, In re Fin-A-Key Express, Inc., App. No. P-68437 (August 1986).

The Commission may order rehearing on its own motion, when it determines that further hearings should be held on the issue of the interplay between Washington's affirmative action statutes and rules and the state's common carrier transportation statutes. RCW 81.04.200; RCW 81.04.210; Former WAC 480-08-250. Order M. V. No. 134610, In re Fin-A-Key Express, Inc., App. No. P-68437 (August 1986).

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### **Former WAC 480-08-250 (cont.)**

The presiding officer's failure to make specific findings of fact about the testimony of each individual supporting shipper does not create a basis for a rehearing. RCW 81.04.200; Former WAC 480-08-250. Order M. V. No. 131310, In re United Truck Lines, Inc., App. No. E-18895 (January 1985).

A petition for rehearing is founded on allegations of injurious effect not contemplated or anticipated by the Commission at the former hearing. A carrier who shows that upon the Commission's reissuance of the permit an error was made, has stated a basis for rehearing. RCW 81.04.200; Former WAC 480-08-250. Order M. V. No. 130398, In re C. A. Slatten d/b/a Southwest Delivery, Co., Inc., App. No. E-851 (September 1984).

Rehearing is discretionary with the Commission. It is designed to deal with changed circumstances injurious to the party, occurring since the entry of a final order, which were not considered by the Commission; or to correct defects in an order which were present when it was issued. RCW 81.04.200; Former WAC 480-08-250(2). Order M. V. CH. No. 995, In re O'Connor Limousine Service, Inc., App. No. CHA-199 (April 1984).

Submission of affidavits after a hearing alleging protestant's misconduct and impeaching testimony of a protestant, will not ordinarily affect the disposition of an application. Allegations of protestant misconduct are only relevant when they go to the continuing ability of the protestant to serve the public. Former RCW 34.04.120; RCW 81.04.200; Former WAC 480-08-250(2). Order M. V. No. 129068, In re John F. Mitchell, App. No. P-67157 (January 1984).

A petition for rehearing must explain why the evidence was not presented at hearing, or show changed circumstances or an unanticipated result to the petitioner that was not foreseen at the time the final order was entered. RCW 81.04.200; Former WAC 480-08-250(2). Order M. V. No. 128561, In re Frank E. Nonnemacher d/b/a Nonnemacher Farms, App. No. P-69910 (October 1983).

A petitioner for rehearing has the burden of showing changed circumstances or injurious results not anticipated by the Commission at the time of entry of an order. A petition for rehearing that cites evidence not presented at hearing, without a showing that the evidence was unavailable to the petitioner at the time of hearing, will be denied. RCW 81.04.200; Former WAC 480-08-250. Order M. V. No. 128561, In re Frank E. Nonnemacher d/b/a Nonnemacher Farms, App. No. P-66910 (October 1983).

When a petition for rehearing is filed, and the language in a certificate appears inappropriate based on current Washington State highway designations, the Commission may on its own motion add review of the language of the certificate to the issues to be considered on rehearing. RCW 81.04.200; Former WAC 480-08-250. Order M. V. C. No. 1371, In re Tacoma Suburban Lines, Inc., App. No. D-2408 (September 1982).

A complaint alleging that an unauthorized airporter service is being run in violation of an earlier Commission order, provides a sufficient basis for rehearing. RCW 81.04.200; Former WAC 480-08-250. Order M. V. C. No. 1371, In re Tacoma Suburban Lines, Inc., App. No. D-2408 (September 1982).

### **Former WAC 480-08-250 (cont.)**

**-- Reconsideration**

A petition for reconsideration which merely argues that the evidence of record was not adequately considered by the Commission, or which reargues a position taken at the hearing or on exception, does not state a basis for relief. Former WAC 480-08-250(1).

Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Order M. V. No. 139215, In re United Couriers, Inc., App. No. E-19645 (March 1989).

Order M. V. No. 139227, In re Parker Refrigerated Service, Inc., App. No. P-71514 (March 1989).

A petition for reconsideration must be timely filed and demonstrate errors of law, patent factual error, or facts reasonably unavailable to the petitioner at the time of entry of an order. Former WAC 480-08-250(1).

Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Order M. V. No. 139948, In re Tac-Key, Inc., d/b/a North End Taxi, App. No. P-72384 (August 1989).

The Commission may consider on its own motion issues raised in late-filed petitions if those issues are of general interest. Former WAC 480-08-250. Order M. V. G. No. 1397, In re Lawrence & Carol O. Matlen, d/b/a Biohazard Management Systems, App. No. GA-894 (July 1989).

Oral argument should not be allowed unless the Commission believes it will provide a benefit to the Commission in addition to the benefit that the Commission derives from written presentations. Former WAC 480-08-250. Order M. V. G. No. 1402, R.S.T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (July 1989).

A petition for reconsideration and request for extension of time will be denied when the petitioner was over three weeks late in submitting required information pertinent to its application for dump truck authority and presents no legally sufficient reason for granting the petition. The orderly administration of Commission business and the need for an end to proceedings require the Commission's observance of administrative deadlines. Former WAC 480-08-250. Order M. V. No. 138715, In re Dahlke, Inc., d/b/a Dahlke Cabinetry Pools/Spas, Inc., App. No. P-72055 (December 1988).

Submission of information after entry of a dismissal order without a reason excusing the failure to submit the information earlier is not sufficient to support reconsideration and rescission of the order of dismissal. Former WAC 480-08-250. Order M. V. No. 138822, In re Fletcher & Fletcher Logging Co., Inc., App. No. P-69691 (December 1988).

**Former WAC 480-08-250 (cont.)**

Reconsideration will be granted when a petitioner can demonstrate either an error of law or facts reasonably unavailable to the petitioner at the time of the entry of an order. Former WAC 480-08-250. Order M. V. No. 138133, In re Metro Hauling, Inc., App. No. E-19614 (August 1988). Related filings: Order M. V. No. 138357, In re Action Express, Inc., App. No. E-19642 (November 1988); Order M. V. No. 138134, In re Great Northern Truck Express, Inc., App. No. E-19633 (August 1988). Order M. V. No. 138132, In re

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Erdahl Brothers Trucking, Inc., App. No. E-19653 (August 1988).

The Commission may grant a petition for reconsideration to correct an erroneous finding of fact in the final order. Former WAC 480-08-250. Order M. V. No. 138604, In re Food Express, Inc., App. No. P-71340 (November 1988).

When an applicant fails to purchase identification stamps and tariffs pursuant to RCW 81.80 and the Commission dismisses the application for lack of prosecution, reconsideration of the order of dismissal will be denied when the applicant had over four months to complete the application process and waited three months after entry of the final order to file its petition. Former WAC 480-08-250. Order M. V. No. 138435, In re C. A. Smith, Inc., App. No. P-71084 (October 1988).

When an applicant's attorney was afforded numerous notices that the applicant must submit an underlying contract, was allowed several extensions of time for its submission and never did submit a document complying with minimum requirements of rule, denial of the application will not be reconsidered. Former WAC 480-08-250. Order M. V. No. 138201, In re Air Cargo Delivery, Inc., App. No. E-19586 (September 1988).

Petitions for reconsideration alleging that the evidence was not considered properly by the Commission or that a minor factual error was made in the findings, the correction of which would not change the results, will be denied. Former WAC 480-08-250. Order M. V. No. 138434, In re Punctual Transportation, Inc., App. No. P-71023 (September 1988).

A petition that merely contends that insufficient weight was given certain evidence by the Commission does not demonstrate errors of fact or law. Former WAC 480-08-250. Order M. V. G. No. 1357, In re Superior Refuse Removal Corporation, App. No. GA-849 (September 1988).

A petition for reconsideration that merely reargues a position taken at the hearing fails to state a basis upon which the requested results may be granted. Former WAC 480-08-250. Thurston County v. Burlington Northern Railroad, Cause No. TR-1930 (August 1988).

When a declaratory order clearly specifies how it is to be applied, a petition for clarification or reconsideration will be denied. Former WAC 480-08-250. In re ITT Rayonier, Cause No. TV-2030 (May 1988).

Petitions for clarification or reconsideration may be addressed to declaratory orders entered pursuant to Former WAC 480-08-050 to allow the Commission the opportunity to clarify or correct such orders. Former WAC 480-08-250. In re ITT Rayonier, Cause No. TV-2030 (May 1988).

### **Former WAC 480-08-250 (cont.)**

A petition for reconsideration may be granted in order to add reference on the record to clarify implementation of an operating ratio methodology. Former WAC 480-08-250. Consolidated Garbage Cases, Cause Nos. TG-2016, TG-2017, TG-2018, TG-2020, TG-2021, TG-2024, TG-2025, TG-2026, TG-2027, TG-3032, and TG-2056 (April 1988).

When a Commission order, entered pursuant to an apparent agreement between the parties, contains a provision alleged to be contrary to the agreement of the parties, and when the Commission concludes from

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an objective review of the file that no agreement regarding the provision has been reached, the order should be rescinded on reconsideration and the matter scheduled for hearing. Former RCW 81.04.165; Former WAC 480-08-250. Order M. V. No. P-71207, In re Scott Davis Transport, Inc., d/b/a SDT, Inc./Gary Davis Trucking, Inc., App. No. P-71207 (March 1988).

An inadvertent error in an appendix to an order granting common carrier authority will be corrected upon reconsideration. Former WAC 480-08-250. Order M. V. No. 136846, In re Pony Express Courier Corporation of America, d/b/a Pony Express Courier, App. No. E-19233 (November 1987).

Petitions for reconsideration are authorized by Former RCW 34.04.090 and Former WAC 480-08-250. The repeal of RCW 81.04.165, setting forth specific requirements for petitions for reconsideration in matters under Title 81, did not deprive the Commission of authority to receive and consider petitions for reconsideration but merely permitted it under law to promulgate its own specific requirements for those petitions. Order M. V. G. No. 1309, In re Richard D. Clevenger, d/b/a Clevenger Sanitation, App. No. GA-827 (November 1987).

When a Commission order fails to make a numbered finding that an applicant's operation of vehicles in two classes of operations is in the public interest, though the issue was discussed in the order, the Commission will grant reconsideration and add the omitted finding. Former RCW 34.04.120; RCW 81.80.260; Former WAC 480-08-250. Order M. V. No. 136846, In re Pony Express Courier Corporation of America, d/b/a Pony Express Courier, App. No. E-19233 (November 1987).

A petition for reconsideration must demonstrate errors of law, or facts reasonably unavailable to the petitioner at the time of entry of an order. When a petition for reconsideration does not demonstrate error in an order granting an application, reconsideration will be denied. Former WAC 480-08-250. Order M. V. No. 136858, In re United Couriers Northwest, Inc., App. No. P-70574 (October 1987).

Findings of Fact are not required in a final order on a question that is not an issue in the proceeding. Former RCW 34.04.090; Former WAC 480-08-240(13); Former WAC 480-08-250. Order M. V. No. 136858, In re United Couriers Northwest, Inc., App. No. P-70574 (October 1987).

The need for an end to proceedings weighs against reconsideration when the parties had sufficient opportunity to create a record and the Commission carefully reviewed it. A petition for reconsideration that merely asserts that the Commission failed to consider accurately the record before it presents no new fact or legal argument that would change the Commission's view. Former WAC 480-08-250. Order M. V. No. 135041, In re Sun Transportation Company, Inc., App. No. P-68362 (November 1986).

### **Former WAC 480-08-250 (cont.)**

An order that denied authority because the applicant's promise of future compliance with was found not credible, due to 233 violations of Commission rules and statutes, will not be reconsidered merely because the applicant alleges it received only 50 penalty assessments. Without a showing of how the number of penalty assessments makes the assurances of future compliance more credible, the petition will be rejected. RCW 81.80.070 (fitness); Former WAC 480-08-250. Order M. V. No. 135041, In re Sun Transportation Company, Inc., App. No. P-68362 (November 1986).

A petition for reconsideration of an order denying an application will be granted when the petitioner can show that its unauthorized operations were commenced in good faith and that the Commission failed to

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consider the competitive circumstances prior to and after the applicant's entry. RCW 81.80.070 (entry common carriers: fitness); Former WAC 480-08-250. Order M. V. No. 135023, In re Washington Trucking, Inc., App. No. E-19174 (November 1986).

A petition for reconsideration must present arguments that change the circumstances presented, or the view of the Commission. A petition for reconsideration that asserts that the Commission has misinterpreted a federal case will be rejected when the interpretation is consistent with the federal case and subsequent federal cases. Former WAC 480-08-250. Order M. V. No. 134938, In re Inland Empire Distribution Systems, Inc., App. No. P-69280 (October 1986).

A petition for reconsideration will be granted when the petitioner can demonstrate an error of law, or facts reasonably unavailable to the petitioner at the time of entry of an order. When language in an order erroneously indicates that the Commission has changed its longstanding practice of investigating applications for temporary authority, the Commission will grant reconsideration and correct the order. RCW 81.04.210; Former WAC 480-08-250. Order M. V. No. 134455, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70239 (August 1986).

A petition for reconsideration that is filed late, is not served on all parties of record, and requests that the Commission consider evidence outside of the hearing record, will be denied. Former RCW 81.04.165; Former WAC 480-08-250. Order M. V. No. 134610, In re Fin-A-Key Express, Inc., App. No. P-68437 (August 1986).

Petitions for reconsideration that merely contend that the evidence of record was not adequately considered by the Commission will be denied. Former RCW 81.04.165; Former WAC 480-08-250. Cause TV-1831, Increased Rates In WUTC Tariff No. 4-A, Item 860, Logs All Species (May 1986).

When findings in a final order were consistent with the record and were appropriate on the evidence, a petition for reconsideration will be denied. Former RCW 34.04.100; Former RCW 81.04.165; Former WAC 480-08-250. Order M. V. No. 133838, In re Inland Empire Distribution Systems, Inc., App. No. P-69280 (April 1986).

Without a demonstration that a matter previously argued and resolved against the petitioner was improperly framed or incorrectly decided on the law, a petition for reconsideration will be denied. Former RCW 81.04.165; Former WAC 480-08-250(2). Order M. V. No. 133958, In re James R. Tolin d/b/a Punctual Transportation, App. No. P-68274 (April 1986).

### **Former WAC 480-08-250 (cont.)**

Evidence submitted in a motion for reconsideration, without a motion for reopening, will be stricken. The proper place for the introduction of evidence is at hearing where the evidence can be tested according to orderly procedure. Former WAC 480-08-250(2). Order M. V. No. 133958, In re James R. Tolin d/b/a Punctual Transportation, App. No. P-68274 (April 1986).

An unprotested portion of an application must be pursued within reasonable times established by the Commission. Reconsideration of an order denying an application will be denied when the applicant failed to submit the required documents until more than six weeks after the close of an extended filing period and more than four months after the close of the original filing period. Former RCW 81.04.165; Former WAC 480-08-250; WAC 480-12-045(6). Order M. V. No. 131853, In re Harold E. Lemay, d/b/a Lucky Towing,



App. No. P-68267 (May 1985).

A petition for reconsideration challenging a final order's finding of applicant's fitness should not be granted when the parties had a sufficient opportunity to create a record on the subject and the Commission had sufficient opportunity to review it. Former WAC 480-08-250. Order M. V. G. No. 1193, In re Amalgamated Services, Inc., App. No. GA-767 (February 1985).

When the Commission phrases a grant of authority in terms of "containers", and the proof shows that the service needed is for removal of materials in 55 gallon barrels, upon a petition for reconsideration the Commission will restructure the grant of authority to "55 gallon containers" to better reflect the evidence. Former WAC 480-08-250(1). Order M. V. G. No. 1193, In re Amalgamated Services, Inc., App. No. GA-767 (February 1985).

When the statements in the memorandum portion of a final order and in the findings of fact are patently different from the record, then, upon a petition for reconsideration, the statements and findings will be corrected. RCW 81.04.210; Former WAC 480-08-250(1). Order M. V. C. No. 1482, In re Pacific Northwest Transportation Services, Inc.; Bremerton-Kitsap Airporter, Inc. d/b/a The Sound Connection, Kitsap-Sea-Tac Airporter; Travelines, Inc., App. Nos. D-2468; D-2469; D-2473 (February 1985).

When statements in the memorandum portion of a final order and in the findings of fact do not accurately reflect the record, upon a petition for reconsideration they will be modified. Former RCW 34.04.120; RCW 81.04.210; Former WAC 480-08-250. Order M. V. C. No. 1482, In re Pacific Northwest Transportation Services, Inc.; Bremerton-Kitsap Airporter, Inc. d/b/a The Sound Connection, Kitsap-Sea-Tac Airporter; Travelines, Inc., App. Nos. D-2468; D-2469; D-2473 (February 1985).

A petition for reconsideration that responds to arguments made on exceptions and draws on possible inference from the record, but states no new matter not reasonably or excusably brought up earlier, will be denied. RCW 81.04.410; Former WAC 480-08-250. Order M. V. No. 130126, In re T & T Milk Transport, Inc., App. No. E-18817 (August 1984).

#### **Former WAC 480-08-250 (cont.)**

Reconsideration ordinarily will be granted only when there is some circumstance beyond the control of the petitioner that prevented it from obtaining a fair hearing, or when an error of law in the order affecting the proceeding is demonstrated. Former WAC 480-08-250. Order M. V. No. 129635, In re Susan Schlosser and Peggy Blake d/b/a The Paper Jogger, App. No. P-67065 (May 1984).

A petition for reconsideration of a final order must show some circumstance beyond the control of the petitioner that prevented the petitioner from obtaining a fair hearing. Former RCW 34.04.120; Former WAC 480-08-250. Order M. V. No. 129635, In re Susan Schlosser and Peggy Blake d/b/a The Paper Jogger, App. No. P-67065 (May 1984).

Because the entry of an order on reconsideration might affect the interest of protestants, a petition for reconsideration should not be considered unless protestants have been served with the petition. Former RCW 81.04.165; Former WAC 480-08-250. Order M. V. No. 129473, In re LTI, Inc. d/b/a Milky Way,

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App. No. P-67441 (April 1984).

A change in Commission policy does not present circumstances requiring reconsideration of orders entered under the prior policy. Former WAC 480-08-250. Order M. V. No. 129473, In re LTI, Inc., d/b/a Milky Way, App. No. P-67441 (April 1984).

An applicant who voluntarily relinquished authority, in order to ensure that its operation would be consistent with Commission policy and to settle with protestants, may not receive reconsideration of an order entered after a change in Commission policy. RCW 81.04.410; Former WAC 480-08-250. Order M. V. No. 129473, In re LTI, Inc. d/b/a Milky Way, App. No. P-67741 (April 1984).

The Commission may, on its own motion, consider matters of general interest that are raised by a deficient petition for reconsideration. Former WAC 480-08-250. Order M. V. No. 129300, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (February 1984).

A "petition for rehearing" that speaks to none of the issues governing rehearings, which does speak to the issues on reconsideration but is received 11 days late for a petition for reconsideration, will be treated as an untimely petition for reconsideration and will be rejected. Former RCW 81.04.165; Former WAC 480-08-250. Order M. V. No. 129300, In re Loren Bowen d/b/a Twalmica Trucking, App. No. P-67223 (February 1984).

A petition for reconsideration of an order consolidating and setting for hearing a transfer application and a complaint is insufficient when the petitioner was given the opportunity to support its petition with answering evidence but no evidence was presented. Former RCW 34.04.120; Former WAC 480-08-250. Order M. V. No. 128672, In re Paffile Truck Lines, Inc./Donald P. Paffile d/b/a Paffile Truck Lines; Kirby Company v. Paffile Truck Lines, Inc., App. No. P-67324 (November 1983).

A petition for reconsideration alleging merely that the evidence was not considered properly by the Commission fails to state new arguments or evidence reasonably unavailable at the time of the hearing and will be denied. Former RCW 34.04.120; RCW 81.04.410; Former WAC 480-08-250. Order M. V. No. 128067, In re Jon S. Pansie d/b/a Tri-Pan Services, App. No. P-65704 (August 1983).

### **Former WAC 480-08-250 (cont.)**

A request for reconsideration that does not indicate whether other parties were served with the request, does not state a specific objection, and was not timely filed, will be rejected. Former WAC 480-08-250. Order M. V. 127491, In re Thomas L. Stevenson d/b/a Thomas L. Stevenson Trucking, App. No. E-18728 (April 1983).

The Commission will deny an applicant's petition for reconsideration, opposing an order reopening a hearing to allow a protestant to amend its protest, which contends--without support--that there is nothing the protestant is going to ask anyway. Former WAC 480-08-250. Order M. V. No. 127174, In re Federal Transfer Company, Inc./J. & H. Trucking, Inc., App. No. P-63301 (February 1983).

A petition for reconsideration will be denied when there is no showing of legal surprise or abuse of discretion by the presiding officer. Former RCW 34.04.120; Former WAC 480-08-050(7); Former WAC 480-08-250. Order M. V. No. 127152, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (February 1983).

The Office of Administrative Hearings has jurisdiction over contested transportation case hearings, when the Commission does not sit, subject to review by the Commission. After the presiding officer gave notice of the date for the applicants to present their case, then refused a motion to dismiss, denied a continuance, and granted the applicant's request that the application be dismissed, the Commission can find no legal surprise to the applicant or abuse of discretion by the presiding officer that would justify reconsideration of a Commission final order affirming the proposed order. Former RCW 34.04.120; Former WAC 480-08-250. Order M. V. No. 127152, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (February 1983).

**-- Reopening on reconsideration**

The Commission will look, by analogy, to CR-59 in determining whether reopening is proper. A petition for reopening should offer allegations of surprise or of newly discovered evidence that was not reasonably available to the petitioner at the time of the hearing. Former WAC 480-08-250(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

The Commission generally interprets "newly discovered evidence" that would support reopening to mean evidence that existed at the time of the hearing, but that was not reasonably available to the petitioner. Former WAC 480-08-250(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

When evidence of public convenience and necessity is alleged to be substantially changed from that presented at the hearing, a new application is the proper forum for developing that evidence. Generally, reopening or rehearing under this circumstance is not appropriate. RCW 81.80.070; Former WAC 480-08-250(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

**Former WAC 480-08-250 (cont.)**

It is not appropriate to reopen a solid waste collection authority proceeding to receive additional evidence about a city's formal position on issues in the proceeding, when evidence was received about the city's position, and when the proffered evidence--if found as fact--would not affect the outcome of the proceeding. Former WAC 480-08-250. Order M. V. G. No. 1402, R.S.T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (July 1989).

If an order is incorrectly entered ex parte, through inadvertence or oversight of the Commission, the error may be corrected on petition for reconsideration. Reopening is proper and the application should be scheduled for hearing as it would have been, had the error not occurred. Former WAC 480-08-250. Order M. V. No. 139703, In re H & K Trucking, Inc., d/b/a North Pacific Transport, App. No. P-72756 (June 1989).

In determining whether to reopen an application, the Commission looks by analogy to CR 59(a), the civil rule for Superior Courts governing vacation of judgment. When the petitioners were not given an

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opportunity to be heard, the application will be docketed and subject to hearing and protest. Former WAC 480-08-250. Order M. V. No. 139728, In re Fletcher & Fletcher Logging Co., Inc./Pioneer Excavating, Inc., App. No. P-72714 (June 1989).

Reopening is proper when there is an un rebutted affidavit by one party and supporting documentation in the file that an informal agreement existed between the parties that was not honored, and when protestants failed to appear at the hearing based on that agreement. Former WAC 480-08-250. Order M. V. No. 138695, In re Mid Valley Equipment, Inc., App. No. E-19606 (December 1988).

A petition for reopening that contends that protestant refused service to a supporting shipper after entry of the final order will not be granted when the final order denied the application on other grounds. RCW 81.80.070; Former WAC 480-08-250. Order M. V. No. 138604, In re Food Express, Inc., App. No. P-71340 (November 1988).

When the Commission offered an applicant for unprotested territory two opportunities to provide written statements of shipper support, and waited months for applicant to respond, the Commission will deny a petition for reconsideration that seeks reopening for submission of the statements. Former WAC 480-08-250. Order M. V. No. 137869, In re McKenna Construction Co., Inc., App. No. E-19517 (July 1988).

When an application is not protested, the Commission will grant a timely-filed petition for reconsideration and accept written statements of shipper support when a life-threatening accident and illness prevented the applicant from furnishing the statements at the time they were requested. Former WAC 480-08-250. Order M. V. No. 137992, In re William James Gibson, d/b/a Gibson Trucking, App. No. P-71508 (July 1988).

A petition to reopen will be denied when the information offered was available to the offering party at the time of the hearing. Former WAC 480-08-250. Thurston County v. Burlington Northern Railroad, Cause No. TR-1930 (April 1988).

### **Former WAC 480-08-250 (cont.)**

A request for reopening merely to supplement petitioner's testimony with evidence available at the time of the initial hearing will be denied. Former WAC 480-08-250. Order M. V. No. 137347, In re Redondo Heights Wrecker Service, Ltd., App. No. E-19454 (February 1988).

Evidence submitted in a motion for reconsideration, without a motion for reopening, will be stricken. The proper place for the introduction of evidence is at hearing where the evidence can be tested according to orderly procedure. Former WAC 480-08-250(2). Order M. V. No. 133958, In re James R. Tolin d/b/a Punctual Transportation, App. No. P-68274 (April 1986).

A hearing record should be reopened to clarify the issue of the applicant's fitness when evidence presented at hearing was potentially inconsistent with a proposed finding of fitness, and when the applicant received citations for illegal operations after the entry of the proposed order. Former WAC 480-08-250. Order M. V. No. 133182, In re Zeb F. Johnson d/b/a All West Auto Transport, App. No. P-69380 (January 1986).

A petition for reopening a hearing that presents no new evidence not available at the time of the hearing, or no consequence unanticipated at the time of entry of the final order, should be denied. Cause No. TR-1726, Whatcom County v. Burlington Northern Railroad Company (December 1985).

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An allegation that a street intersection has become more dangerous since the closing of a railway crossing does not provide a basis for reopening a hearing on the closure of a railway crossing in which the Commission addressed the anticipated increased traffic at the intersection. RCW 81.53.060; Former WAC 480-08-250. Causes TR-1726 and TR-1726, Whatcom County v. Burlington Northern Railroad Company, (December 1985)

The permit authority of a protestant is a matter of public record and is, therefore, information reasonably available to the parties for inquiry at the time of the hearing. Reopening should not be granted to receive evidence reasonably available at the time of the hearing. Former RCW 34.04.100(2); Former WAC 480-08-250. Order M. V. G. No. 1206, In re Lawson Disposal, Inc., App. No. GA-795 (October 1985).

A county that filed petitions to close railroad crossings as an alternative to obtaining crossing signals, has no grounds to reopen a hearing based on disappointment with a Commission ruling granting the county's petitions and closing those crossings. RCW 81.53.060; Former WAC 480-08-250. TR-1725; TR-1726, Whatcom County v. Burlington Northern Railroad, Inc., (January 1985).

The necessity to renegotiate a contract for the purchase of common carrier authority does not provide a basis for reopening if no unfair result from Commission action is occurring or alleged. Former WAC 480-08-250. Order M. V. No. 130918, A & B Trucking, Inc./Evergreen Western Express Service, Inc. d/b/a Western Express Service/Randolph Miller, App. No. P-67267 (December 1984).

It is unnecessary for an order to state that the proceeding may be reopened by petition in the event of violations of restrictions in the final order, as such a right already exists. Former WAC 480-08-250. Order M. V. C. No. 1422, In re Tacoma Suburban Lines, Inc., App. No. D-2408 (April 1984).

### **Former WAC 480-08-250 (cont.)**

Reopening will be denied when it is not shown how evidence of the failure of one of the protesting carriers to solicit a supporting shipper would be relevant to the case. Former WAC 480-08-250. Order M. V. No. 128996, In re OK Distribution, Inc., App. No. P-67056 (February 1984).

A petition for reopening should show circumstances not reasonably foreseeable during the initial presentation of evidence. When the Commission denies a transfer application for lack of evidence of holding out during the correct test period, after the Commission has rejected the test period applied by the proposed order, the applicant has demonstrated circumstances not reasonably foreseeable at the time of hearing and the hearing should be reopened to take evidence of holding out in the correct test period. Former WAC 480-08-250. Order M. V. No. 126785, In re John A. Huffman/Nick's Hauling Service, App. No. P-65687 (April 1983).

In considering reopening, the Commission looks by analogy to CR-59(a). Reopening may be granted upon a showing of circumstances beyond the control of the applicant not reasonably foreseeable during the initial presentation of the case. Former WAC 480-08-250. Order M. V. No. 126785, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (April 1983).

A petition for reopening that demonstrates only the possession of additional evidence--without allegations of accident, surprise, or newly discovered evidence unavailable at the time of the hearing--should be denied. Former WAC 480-08-250. Order S. B. C. No. 398, In re Island Ferry, Inc., App. No. B-277 (August 1982).

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The Commission may decide a petition on the basis of the issues presented, and is not confined by the title of the petition. A petition for reopening will be denied unless it offers allegations of surprise, or evidence not reasonably available to the petitioner at the time of hearing. RCW 81.04.200; Former WAC 480-08-250. Order S. B. C. No. 398, In re Island Ferry, Inc., App. No. B-277 (August 1982).

When a petition asks for a rehearing but does not demonstrate unanticipated or injurious result not foreseen at the time of entry of a Commission final order, nor is the petition filed in the time for a petition for reconsideration, the Commission may treat the document as a petition for reopening. Former WAC 480-08-250. Order S. B. C. No. 398, In re Island Ferry, Inc., App. No. B-277 (August 1982).

### **Former WAC 480-08-330      General application--Special rules--Exceptions --Cancellation of former rules**

The Commission will not subject a clearly mandatory rule to exceptions that are not supported by an overriding public purpose. WAC 480-12-045(3)(d) will not be waived to allow intervention when the potential intervenor or its predecessor had the opportunity to protest the application. Former WAC 480-08-330(3). Order M. V. No. 135089, In re E. C. Browne, d/b/a A-N Auction Transport, App. No. P-69188 (December 1986).

## **CHAPTER 480-09 WAC PROCEDURE**

(Effective November 12, 1989)\*\*

### **WAC 480-09-120 Filing and service.**

Receipt in the Commission's telefax machine does not constitute filing of a petition for reconsideration. WAC 480-09-120. Order M. V. No. 147521, In re Merrel Cline, d/b/a Courtesy Mobile Home Service, App. No. P-77625 (February 1994).

An allegation by a solid waste carrier that it did not receive a Commission order does not support reconsideration when the carrier failed to report a change in the address of its principal place of business as required by WAC 480-70-040, did not leave a forwarding address with the post office, and the Commission order was properly served on the carrier as provided in WAC 480-09-120(2)(c). WAC 480-09-120; 480-09-810; 480-70-040. Order M. V. C. No. 1992, WUTC v. Medical Waste Management Systems, Inc., Hearing No. H-5004 (December 1992).

Carriers who have only conditionally withdrawn their protests remain as parties, and a request for dismissal of the proceeding should be served on them. WAC 480-09-140; WAC 480-09-120; WAC 480-09-410; WAC 480-12-045. Order M. V. No. 145627, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1992).

Generally, communications involving a pending case must be served on all parties, and service must be certified to the Commission. RCW 34.05.455; WAC 480-09-140; WAC 480-09-120. Order M. V. No. 145517, In re Star Moving & Storage, Inc./United Couriers, App. No. P-73707 (September 1992).

The Commission will not strike a pleading for a claimed partial failure of service when there is no objective indication that service was incomplete, and it appears that no party was prejudiced if an error in service did occur. WAC 480-09-120. Order M. V. No. 144597, In re R.C. Kercheval, Inc./Katmai Transport, Inc., App. No. P-74415 (February 1992).

The Commission will reject a petition for reconsideration that does not include a certificate showing service of the petition upon all parties. RCW 34.05.437; WAC 480-09-120; WAC 480-09-810. Order M. V. No. 142172, WUTC v. K-Lines, Inc., Hearing No. H-4990 (October 1990).

Documents must be filed in compliance with the rules in order to receive Commission consideration: The Commission must deny a petition for reconsideration that was not timely filed. A party's service upon the other parties and the assistant attorney general, does not constitute "filing" with the Commission. RCW 34.05.470; WAC 480-09-120(1)(c); WAC 480-09-810(2). In re National Railroad Passenger Corp., Docket No. TR-2250 (August 1990).

A petition for reconsideration must be served on all parties of record, and it must contain a certificate of service. WAC 480-09-120(2)(d); WAC 480-09-810(2). In re National Railroad Passenger Corp., Docket No. TR-2248 (August 1990).

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\*\* See Index for references to former procedural rules.

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### **WAC 480-09-120 (cont.)**

Service upon "all parties" includes the assistant attorney general; valid service of a pleading requires a correct certificate of service. WAC 480-09-120(1)(c); WAC 480-09-120(2)(d); WAC 480-09-410(2). Order M. V. G. No. 1412, In re R.S.T. Disposal Co., Inc., d/b/a Tri-Star Disposal & Seattle Disposal Co., d/b/a Rabanco Companies, App. Nos. GA-845 & GA-851, respectively (January 1990).

When the name and address of an applicant's attorney is published in the weekly docket, any protest to the application must be served upon the attorney; service upon the applicant alone is not sufficient. RCW 34.05.437(3); WAC 480-09-120(2)(a); WAC 480-12-045(3). Order M. V. No. 140715, In re H & K Trucking, Inc., d/b/a North Pacific Transport, App. No. P-72756 (January 1990).

### **WAC 480-09-140 Ex parte communications.**

Communications involving a pending case must be served on all parties, and service must be certified to the Commission. RCW 34.05.455; WAC 480-09-140; WAC 480-09-120. Order M. V. No. 145517, In re Star Moving & Storage, Inc./United Couriers, App. No. P-73707 (September 1992).

Carriers who have only conditionally withdrawn their protests remain as parties, and a request for dismissal of the proceeding should be served on them. WAC 480-09-140; WAC 480-09-120; WAC 480-09-410; WAC 480-12-045. Order M. V. No. 145627, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1992).

### **WAC 480-09-200 Interpretive and policy statements.**

A letter from the Commission secretary does not announce a Commission policy inconsistent with a prior order when it merely declines to take discretionary action, deals with a different company on facts not expressed in the letter, is not an interpretive or policy statement, is not a declaratory order, and is not the result of an adjudication. RCW 34.05.230; 34.05.010(15); 34.05.240; WAC 480-09-200; 480-09-230. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).



**WAC 480-09-220 Petitions for rule making, amendment, or repeal.**

The Commission is not required to promulgate rules when existing law may be applied to accomplish the process for which the rules are proposed. RCW 34.05.010(15); WAC 480-09-220.

Order M. V. No. 140681, In re Action Express, Inc., App. No. E-19642 (December 1989) Order M. V. No. 140688, In re Joy Motor Freight, Inc., App. No. E-19688 (December 1989)

Order M. V. No. 140698, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (December 1989).

Order M. V. No. 140700, In re Okanogan-Seattle Transport Co., Inc., App. No. E-19689 (December 1989).

A petition for adoption of a rule will be denied when the rule is unnecessary and existing law may be applied to accomplish the process for which the rule is proposed. WAC 480-09-220. Docket No. TV-2284, In re United Truck Lines, Inc. (August 1989).

**WAC 480-09-230 Declaratory orders.**

The Commission cannot enter a declaratory order substantially affecting the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by declaratory order proceeding. RCW 34.05.240; WAC 480-09-230. In the Matter of the Petition of Washington Refuse and Recycling Association for a Declaratory Ruling, Docket No. TG-971676 (December 1997).

The Commission will decline to enter a declaratory order on a petition that fails to meet the minimum requirements of RCW 34.05.240(1) necessary to initiate a declaratory proceeding. RCW 34.05.240; WAC 480-09-230. In the Matter of the Petition of Washington Refuse and Recycling Association for a Declaratory Ruling, Docket No. TG-971676 (December 1997).

The Commission generally will not consolidate a complaint with a petition for declaratory order on related issues, and will defer the petition for declaratory order until conclusion of the complaint proceeding, inasmuch as the complaint presents a true factual setting and a real matter in controversy in which the issues may be decided in context. WAC 480-09-230; 480-09-425; 480-09-610. In re San Juan Express, Inc., Docket No. TS-940956 (July 1994).

An opinion letter from a Commission employee interpreting a permit is not a formal Commission interpretation, is subject to change, and is not binding on the Commission. WAC 480-09-230; 480-12-070; 480-12-990. Docket No. TV-920324, In re Victor J. Scalzo, d/b/a Thomas Scalzo Co. (October 1992).

A letter from the Commission secretary does not announce a Commission policy inconsistent with a prior order when it merely declines to take discretionary action, deals with a different company on facts not expressed in the letter, is not an interpretive or policy statement, is not a declaratory order, and is not the result of an adjudication. RCW 34.05.230; 34.05.010(15); 34.05.240; WAC 480-09-200; 480-09-230. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

## **Chapter 480-09 WAC**

### **WAC 480-09-390 Objections to closures of highway-railroad grade crossings.**

A citizen who testified at the hearing, and did not seek to intervene, does not have party status and has no right to petition for administrative review. WAC 480-09-390; WAC 480-09-780. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950176 (July 1996).

### **WAC 480-09-400 Applications for adjudicative proceedings.**

The Commission will deny an applicant's request for dismissal of an adjudicative proceeding when it is not satisfied that all pertinent issues are resolved or that the matter is properly dismissed. WAC 480-12-045; 480-09-400. Order M. V. No. 145517, In re Star Moving & Storage, Inc./United Couriers, App. No. P-73707 (September 1992); recon. denied, Order M. V. No. 145627 (September 1992) and Order M. V. No. 145740 (October 1992).

The Commission may order further hearings in a proceeding whenever it is not satisfied that all pertinent issues are resolved, even if the protestants have unconditionally withdrawn and the applicant seeks to withdraw the application. WAC 480-12-045; 480-09-400. Order M. V. No. 145740, In re Star Moving & Storage, Inc./United Couriers, App. Nos. P-73707 & P-75799 (October 1992).

### **WAC 480-09-410 Parties.**

#### **Cross References**

< Protestants--Extent of Participation: See also WAC 480-12-045.

Carriers who have only conditionally withdrawn their protests remain as parties, and a request for dismissal of the proceeding should be served on them. WAC 480-09-140; WAC 480-09-120; WAC 480-09-410; WAC 480-12-045. Order M. V. No. 145627, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1992).

Parties need not present testimony at every hearing in order to maintain party status. WAC 480-09-410(1). Order M. V. No. 141006, In re Becker Trucking, Inc., d/b/a Becker Trucking: Becker Express, App. No. E-19787 (March 1990).

Service upon "all parties" includes the assistant attorney general; valid service of a pleading requires a correct certificate of service. WAC 480-09-120(1)(c); WAC 480-09-120(2)(d); WAC 480-09-410(2). Order M. V. G. No. 1412, In re R.S.T. Disposal Co., Inc., d/b/a Tri-Star Disposal & Seattle Disposal Co., d/b/a Rabanco Companies, App. Nos. GA-845 & GA-851, respectively (January 1990).

**WAC 480-09-420 Pleadings--Applications for authority--Protests.**

Subsections of rule:

- |  |                          |
|--|--------------------------|
| (1) Legibility; size; length; service. | (6) Protests             |
| (2) Errors in pleadings.               | (7) Petitions            |
| (3) Form.                              | (8) Motions              |
| (4) Number of copies; size.            | (9) Responsive Pleadings |
| (5) Complaints.                        |                          |

**Cross reference**

< Application for authority, docketing; Protests: See WAC 480-12-045.

A person who could have protested an application but failed to file a timely protest may not participate in any hearing on the application. That means it may not intervene in the proceeding, may not on its own initiative sponsor a witness, and may not provide a witness to a party for the purpose of providing general evidence about its own operations and its own ability to meet shipper needs. A witness associated with the person might be able to testify for a party to the extent necessary to preserve that party's rights to present rebuttal. WAC 480-09-420; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

A "motion to strike" portions of an answer to a petition for administrative review that merely seeks to argue issues raised by the answers will be treated as a "reply" and, if filed without leave of the Commission, will be disregarded. WAC 480-09-420. Order M. V. No. 143056, In re D & D ICS Group, Inc., d/b/a Insurance Courier Services, App. No. P-73119 (April, 1991); recon. denied, Order M. V. No. 143513 (July 1991).

The Commission will not accept a second pleading on behalf of a party while another of the same sort is pending on the party's behalf. WAC 480-09-420; 480-12-045. Order M. V. G. No. 1472, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1991).

Motions must be filed separately from any other filing; otherwise they are subject to a motion to strike. WAC 480-09-420(8); WAC 480-09-425(2). Order S. B. C. No. 467, In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, App. No. B-308 (May 1990).

A reply to an answer to a petition for administrative review may be filed upon a showing of cause only with authorization by the Commission. WAC 480-09-420. Order S. B. C. No. 467, In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, App. No. B-308 (May 1990).

## **Chapter 480-09 WAC**

### **WAC 480-09-420 (cont.)**

The proper response to a motion is an answer, filed within 20 days after the service of the pleading against which it is directed. WAC 480-09-420(9)(a); WAC 480-09-425(3). Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (December 1989).

A party's second answer to a motion, filed late and without leave of the Commission, will be rejected. WAC 480-09-420; WAC 480-09-425. Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (December 1989).

A failure of service that has a potentially severe adverse effect upon a party, renders service of the pleading insufficient. WAC 480-08-060; WAC 480-09-420(1). Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (December 1989).

**WAC 480-09-425**      **Pleadings--Verification, time for filing, responsive pleadings, liberal construction, amendments.**

Subsections of rule:

- (1) Verification.
- (2) Time for motions.
- (3) Time for answer; reply.
- (4) Liberal construction.
- (5) Amendments.

When issues that could affect the public interest are raised in an imperfect or impermissible pleading, the Commission may on its own motion consider matters raised in the pleading. WAC 480-09-425. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950176 (July 1996).

A petition for a remedy that the Commission may not be able to grant may be treated as a complaint, pursuant to WAC 480-09-425. In re San Juan Express, Inc., Docket No. TS-940956 (July 1994).

The Commission generally will not consolidate a complaint with a petition for declaratory order on related issues, and will defer the petition for declaratory order until conclusion of the complaint proceeding, inasmuch as the complaint presents a true factual setting and a real matter in controversy in which the issues may be decided in context. WAC 480-09-230; 480-09-425; 480-09-610. In re San Juan Express, Inc., Docket No. TS-940956 (July 1994).

No degree of liberalism in interpretation will transform a complaint containing no mention of an application into a protest of that application. WAC 480-09-425; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

The Commission interprets pleadings liberally with a view to effecting justice among the parties. WAC 480-09-425(4). Order M. V. No. 146114, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (February 1993).

The Commission ordinarily will not strike a petition for administrative review that partially fails to comply with WAC 480-09-780(4) but does clearly and understandably set forth challenges to the initial order, when doing so does not prejudice any other party. WAC 480-09-425(4); 480-09-780. Order M. V. No. 144597, In re R.C. Kercheval, Inc./Katmai Transport, Inc., App. No. P-74415 (February 1992); Order M. V. No. 144730, In re Gerald R. Severson, App. No. P-75194 (March 1992).

## **Chapter 480-09 WAC**

### **WAC 480-09-425 (cont.)**

The Commission will allow an amendment to an application at any time, provided the amendment has no adverse affect on interests of persons who are not parties to the proceeding. An amendment that expands the scope of the authority sought must be re-published in the Commission docket. RCW 81.77.040; WAC 480-09-425(5); WAC 480-70-150(1), (2). Order M. V. G. No. 1451, In re Sure-Way Incineration, Inc., Hearing No. GA-868 (November 1990).

Motions must be filed separately from any other filing; otherwise they are subject to a motion to strike. WAC 480-09-420(8); WAC 480-09-425(2). Order S. B. C. No. 467, In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, App. No. B-308 (May 1990).

The proper response to a motion is an answer, filed within 20 days after the service of the pleading against which it is directed. WAC 480-09-420(9)(a); WAC 480-09-425(3). Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (December 1989).

A party's second answer to a motion, filed late and without leave of the Commission, will be rejected. WAC 480-09-420; WAC 480-09-425. Order M. V. G. No. 1408, R. S. T. Disposal Co., Inc., d/b/a Tri-Star Disposal, Cause No. GA-845; Seattle Disposal Co., d/b/a Rabanco Companies, Cause No. GA-851 (December 1989).

### **WAC 480-09-430 Intervention.**

A decision by an administrative law judge regarding a petition to intervene is subject to Commission interlocutory review. WAC 480-09-430; 480-09-760. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

Review of an interlocutory order is appropriate when the order would totally exclude the person from the proceeding, and post-hearing review could not fully correct the person's exclusion without further proceedings imposing substantial burdens on all parties and on the Commission. WAC 480-09-430; 480-09-760. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

Allowing intervention after the cutoff for protests from persons who could have protested is inconsistent with WAC 480-12-045 and with the purposes of the rule. WAC 480-09-430; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

**WAC 480-09-430 (cont.)**

An applicant's testimony that he knew he could be "ornery" about a protestant's intervention--but that he would not--combined with two instances of constructive notice of the protestant's opposition to the application, were sufficient basis for the administrative law judge to conclude that the applicant voluntarily waived his right to object to the protestant's participation at hearing. The presiding officer was in the best position to observe the applicant and assess whether the applicant understood his right to object to the protestant's intervention, and to waive that right. RCW 34.05.443(1),(3); RCW 34.05.449(2); WAC 480-09-430. Order M. V. No. 141982, In re Wirkkala Mechanics, Inc., App. No. P-73424 (October 1990).

**WAC 480-09-440 Continuances--Extensions of time.**

A petition for administrative review filed after the expiration of a Commission-granted extension of time is untimely, and the Commission may dismiss it. RCW 34.05.464; WAC 480-09-440; 480-09-780. Order M. V. No. 145883, In re Mark Storer, d/b/a Airport, Burien, Seatac Towing, App. No. P-75927 (December 1992).

When an essential witness is unexpectedly unavailable for hearing, the appropriate procedure is for the sponsoring party to request a continuance. An allegation that an essential witness was unavailable, first made in a petition for reopening after conclusion of the hearing and entry of an initial order adverse to the party, will not support reopening. WAC 480-09-440; 480-09-820. Order M. V. No. 145861, In re Robert H. Culpepper d/b/a Rubicon River Railroad, App. No. P-76139 (December 1992).

**WAC 480-09-465 Settlement.**

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620; Sixth Supplemental Order (December 1995).

The Commission may accept a settlement agreement that resolves some of the issues in a rate proceeding when it finds the proposed settlement to be consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620; Fifth Supplemental Order (October 1995).

## **Chapter 480-09 WAC**

### **WAC 480-09-465 (cont.)**

The Commission may accept a stipulated settlement resolving all material issues in a case, when it finds that the result is consistent with the public interest. WAC 480-09-465; RCW 81.53.060. Thurston County v. Burlington Northern Railroad, Cause No. TR-1930 (October 1996).

The Commission may approve a settlement in a contested proceeding that resolves all outstanding disputes and is in the public interest. RCW 34.05.060; WAC 480-09-465. In re US Ecology, Inc., Docket No. TG-920234, Tenth Supplemental Order; WUTC v. US Ecology, Inc., Docket No. UR-930711, Sixth Supplemental Order; Washington Public Power Supply System v. US Ecology, Inc., Docket No. UR-930890, Sixth Supplemental Order (March 1994).

The Commission may accept a proposed settlement agreement when its terms and conditions are in the public interest. WAC 480-09-465. Armored Transport Northwest, Inc. v. Loomis Armored Car Service, Inc., d/b/a Loomis Armored, Inc., Docket No. TV-921198 (February 1994).

A Commission order inviting parties in a contested proceeding to participate in informal settlement meetings does not preclude a party from any position or from presenting any evidence, does not resolve any evidentiary or ultimate legal issue in the dispute, and does not foreclose further administrative or judicial process. RCW 34.05.060; WAC 480-09-465. Spokane County v. Burlington Northern Railroad Company, Docket Nos. TR-931088; TR-931089; & TR-931090 (Consolidated) (January 1994).

When it appears to the Commission that it is essential for the parties to begin communicating in a way that allows them to share information, to discover areas in which they agree, and to provide a forum for narrowing differences and opportunities for reaching consensus in areas in which they disagree, it may direct Commission Staff to engage the parties in dialogue and to schedule meetings at which the parties may discuss the issues freely and off the record. RCW 34.05.060; WAC 480-09-465. In re Spokane County v. Burlington Northern Railroad Company, Docket Nos. TR-931088, TR-931089, TR-931090 (December 1993).

The Commission will accept a stipulated settlement resolving all material issues in a case, when it finds that the settlement is consistent with the public interest. RCW 34.05.060; WAC 480-09-465. Order M. V. No. 141281, Quality Transportation Service, Inc./Czyhold Truck Lines, Inc., Hearing No. P-71961; Order M. V. No. 141280, Quality Transportation Service, Inc./Easley Hauling Service, Inc., Hearing No. P-71959; Order M. V. No. 141282, Quality Transportation Service, Inc./Brader Hauling Service, Inc., Hearing No. P-71963 (May 1990).

### **WAC 480-09-470 Stipulation as to facts.**

The Commission will not allow a party to recant stipulated facts incorporated into proposed findings without offering recommended findings and without presenting any reasons why the stipulation should not be accepted. WAC 480-08-160; WAC 480-09-470. In re Arrow Sanitary Service, Inc., d/b/a Oregon Paper Fiber, Cause No. TG-2197 (December 1989).



**WAC 480-09-480 Methods for obtaining data in adjudicative proceedings.**

The expanded discovery procedures provided in WAC 480-09-480 generally are not available in sold waste permit transfer proceedings. Order M. V. G. No. 1772, In re Buchmann Sanitary Service, Inc./Browning-Ferris Industries of Washington, Inc. App. No. GA-78433; In re The Disposal Group, Inc./Browning-Ferris Industries of Washington, Inc., App. No. GA-78444 (March 1996).

The Commission will deny a motion to declare proceedings to be of a precedential nature when the issues appear relatively straightforward and of a sort presented in every proceeding of the type. WAC 480-09-480. In re Spokane County v. Burlington Northern Railroad Company, Docket Nos. TR-931088, TR-931089, TR-931090 (December 1993).

**WAC 480-09-500 Brief adjudicative proceedings.**

The decision whether to conduct a brief adjudication on a contested application for temporary authority is a discretionary act. WAC 480-09-500; 480-12-033. Order M. V. No. 147519, In re Hays Home Delivery (Washington), Inc., d/b/a Hays Home Delivery, App. No. P-77668 (February 1994).

A hearing is not required on an application for temporary authority merely because the protestant has submitted credible rebuttal evidence; the Commission has discretion to order a brief adjudicative hearing. RCW 81.80.170; WAC 480-12-033; WAC 480-09-500. Order M. V. No. 145831, In re Puregro Company, d/b/a Northwest Trucking, App. No. P-76229 (December 1992).

A brief adjudication is a means to allow dialogue, explanations, and a review and consideration of issues while balancing a need for full knowledge of the facts and full study of with law with the need to make a practical decision in a limited time frame. RCW 34.05.482; WAC 480-09-500. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

WAC 480-09-500 gives the Commission discretion to use brief adjudications to resolve issues involving temporary applications. The decision to hold a brief adjudication and the decision to grant or deny temporary authority are both discretionary acts. RCW 81.77.110 WAC 480-09-500; 480-70-130. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

Brief adjudicative proceedings may be used in situations authorized by rule. In light of a lack of statutory authority, temporary authority may not be granted to a steamboat company. RCW 81.84.010; WAC 480-09-500; WAC 480-09-510. Order S. B. C. No. 461, In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, App. No. B-308 (December 1989); Order S. B. C. No. 463, In re Belairco, Inc., d/b/a A.I.T. Waterways, App. No. B-313 (December 1989).

**WAC 480-09-510 Emergency adjudicative proceedings.**

When no emergency is shown to exist and when the situation is not one that is included in the rule for which a brief adjudicative proceeding may be used, applicants for temporary boat launch authority have no recourse. RCW 81.84.010; WAC 480-09-500; WAC 480-09-510. Order S. B. C. No. 461, In re Jack Rood and Jack L. Harmon Jr., d/b/a Arrow Launch Service, App. No. B-308 (December 1989); Order S. B. C. No. 463, In re Belairco, Inc., d/b/a A.I.T. Waterways, App. No. B-313 (December 1989).

## **Chapter 480-09 WAC**

### **WAC 480-09-610 Consolidation of proceedings.**

The Commission generally will not consolidate a complaint with a petition for declaratory order on related issues, and will defer the petition for declaratory order until conclusion of the complaint proceeding, inasmuch as the complaint presents a true factual setting and a real matter in controversy in which the issues may be decided in context. WAC 480-09-230; 480-09-425; 480-09-610. In re San Juan Express, Inc., Docket No. TS-940956 (July 1994).

The Commission may order that proceedings be consolidated for hearing and disposition when the facts and principles in the two proceedings are related, particularly when consolidation will conserve time and resources. WAC 480-09-610. Order M. V. G. No. 1682, In re Ryder Distribution Resources, Inc., App. No. GA-75154; In re Stericycle of Washington, Inc., App. No. GA-77539 (January 1994).

An administrative law judge may not resolve a request for consolidation of matters. WAC 480-09-610 provides that requests for consolidation shall be addressed to the Commission, which may either resolve them or refer them to the office of administrative hearings. Order M. V. G. No. 1668, In re Brent Gagnon, d/b/a West Waste & Recycling, App. No. GA-76306 (November 1993).

### **WAC 480-09-700 Hearings--Notice and failure to appear.**

Subsections of rule:

- (1) Notice.
- (2) [re: limited English speaking/interpreters]
- (3) Failure to appear - default - dismissal.
- (4) Sanctions for failure to appear.

### **Cross Reference**

< See WAC 480-12-045.

If an applicant for auto transportation authority within territory already served fails to appear at the hearing on the application, the Commission may dismiss the application if no good cause is shown for the absence. Whether or not a protest is filed, the Commission is required to hold a hearing before it may grant auto transportation authority within territory already served, and is required to find that the public convenience and necessity require an additional carrier. That requires that an applicant come forward and present evidence at hearing in support of the application. RCW 81.68.040; WAC 480-09-700. Order M.V.C. No. 2160, In re Ali, Abdirahman Y., d/b/a Broadway Express, App. No. D-78583 (September 1997).

A penalty will be assessed against an applicant who fails to appear at a scheduled hearing unless the nonappearance is excused. WAC 480-09-045(4)(e); 480-09-700(3)(c). Order M. V. No. 145921, In re R. W. Henriksen, Inc./Cornerstone Construction, Inc., App. No. P-75387 (December 1992).

**WAC 480-09-700 (cont.)**

The Commission will deny a petition for reopening filed pursuant to WAC 480-09-700(3)(c) by a party who failed to appear at the time and place set for hearing if the petitioner does not support the petition by showing good cause for failing to appear or seek a continuance. WAC 480-09-700(3)(c). Order M. V. No. 145921, In re R. W. Henricksen, Inc./Cornerstone Construction, Inc., App. No. P-75387 (December 1992).

A party's calendaring a hearing for the wrong date does not constitute good cause for failure to appear; it does not support reopening. RCW 34.05.440; WAC 480-09-700. Order M. V. No. 144473, In re Quigg Brothers-McDonald, Inc., App. No. E-75325 (January 1992).

A petition for reopening following dismissal for failure to appear must be supported by a showing of good cause for the failure to appear. Forgetting about a hearing, and being too busy with other matters, does not constitute good cause. WAC 480-09-700(3)(c). Order M. V. No. 143791, In re Jimmy Ray Stidman, d/b/a Stidman Construction, App. No. P-74795 (August 1991).

A penalty assessment will be made against a protestant who fails to appear at a scheduled hearing, when the protestant's failure to appear results in unnecessary appearances by others. RCW 81.04.380; 81.04.405; WAC 480-09-700; 480-12-045(4). Order M. V. No. 143651, In re Eppich Grain, Inc., App. No. E-74760 (July 1991).

The Commission may not assess a penalty for nonappearance at a hearing unless the nonappearing party is a public service company. RCW 81.04.380; 81.04.387; WAC 480-09-700; 480-12-045(4). Order M. V. No. 143355, In re Marjorie J., Brian L., and Robert E. Bent, d/b/a Bent and Sons, Inc., App. No. P-74294 (May 1991).

A penalty assessment will be made against a party who fails to appear at a scheduled hearing, when that failure results in unnecessary appearances by other parties, the presiding officer, and the court reporter. RCW 81.04.405; WAC 480-09-700(3). Order M. V. No. 141617, In re Donald Richard and Donald Eugene Steele, d/b/a D & D Trucking, App. No. E-19965 (July 1990).

In determining whether to dismiss a protest for the protestant's failure to appear, the Commission will consider whether the protestant missed the initial hearing session; whether the protestant alone objects or is one of several protestants; whether the protestant made a commitment to be present, whether the absence causes disruption of the proceeding; and any other factor relevant under the circumstances. WAC 480-09-700(3). Order M. V. No. 141006, In re Becker Trucking, Inc., d/b/a Becker Trucking: Becker Express, App. No. E-19787 (March 1990).

## **Chapter 480-09 WAC**

### **WAC 480-09-710 Appearance and practice before commission.**

When a citizen alleges that a governmental body=s representative at hearing, who had apparent authority to appear for the governmental body, had no actual specific authority to appear on its behalf, but the governmental body had notice of the hearing and the initial order resulting from the hearing and has made no objection at any point, the governmental body has ratified the appearance and the Commission has no jurisdiction to determine whether a specific person lawfully acts as agent for the governmental body. RCW 34.05.449; WAC 480-09-710. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950176 (July 1996).

That the Commission has denied a motion to reopen does not determine that the motion was frivolous, and the Commission will not censure or impose sanctions against the movant's counsel absent sufficient facts on which to determine frivolity. WAC 480-09- 710(3). Order M. V. No. 147317, In re Star Moving & Storage, Inc./United Couriers, Inc., App. Nos. P-73707 & P-75799 (December 1993).

### **WAC 480-09-720 Appearances--Party status.**

A protestant need not present testimony in order to maintain party status. WAC 480-09-720. Order M. V. No. 146978, In re First Installation Repair & Service, Inc., d/b/a First, Inc., App. No. P-76480 (September 1993).

### **WAC 480-09-740 Evidence.**

#### **Cross Reference**

< Rules of Evidence: See RCW 34.05.452.

### **WAC 480-09-760 Interlocutory orders.**

A decision by an administrative law judge regarding a petition to intervene is subject to Commission interlocutory review. WAC 480-09-430; 480-09-760. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

Review of interlocutory orders and rulings is discretionary with the Commission. WAC 480-09-760. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

## **Chapter 480-09 WAC**

### **WAC 480-09-760 (cont.)**

Review of an interlocutory order is appropriate when the order would totally exclude the person from the proceeding, and post-hearing review could not fully correct the person's exclusion without further proceedings imposing substantial burdens on all parties and on the Commission. WAC 480-09-430; 480-09-760. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

Review of interlocutory rulings and orders is discretionary with the Commission. WAC 480-09-760. Fourth Supplemental Order, In re US Ecology, Inc., Docket No. TG-920234 (September 1992).

Review of interlocutory rulings and orders of administrative law judges is discretionary with the Commission; review generally will be denied when the issue may be argued on petition for administrative review, and, if found to be reversible error, may be corrected through a brief supplementary procedure. WAC 480-09-760. Fifth Supplemental Order, In re U S Ecology, Inc., Docket No. TG-920234 (September 1992).

### **WAC 480-09-780 Entry of initial and final orders--Administrative review.**

Subsections of rule:

- (1) General.
- (2) Petitions for administrative review - time for filing - who may file - required copies.
- (3) Petitions for administrative review - length - contents.
- (4) Answers.
- (5) Oral argument.
- (6) Final order.

### **Cross References**

- < Review of Initial Orders: See also RCW 34.05.464.
- < Review of Initial Order's Credibility Findings: See RCW 34.05.464.
- < Voluntary Dismissal After Initial Order: See RCW 34.05.464; WAC 480-12-045.

A citizen who testified at the hearing, and did not seek to intervene, does not have party status and has no right to petition for administrative review. WAC 480-09-390; WAC 480-09-780. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950176 (July 1996).

New evidence submitted with a petition for review without a motion to reopen and showing that reopening to receive new evidence is appropriate will be stricken. RCW 34.05.464; WAC 480-09-780; 480-09-820. Order M. V. No. 148366, In re Daniel C. Lawson, d/b/a Lawson Trucking/Schneider Trucking, Inc., App. No. P-77823 (December 1994).

## **Chapter 480-09 WAC**

### **WAC 480-09-780 (cont.)**

A petition for administrative review filed after the expiration of a Commission-granted extension of time is untimely, and the Commission may dismiss it. RCW 34.05.464; WAC 480-09-780. Order M. V. No. 147841, In re United Motor Freight, Inc., App. No. P-77093 (June 1994).

The Commission may strike a petition for administrative review that does not minimally comply with WAC 480-09-780(3) regarding form and content. Order M. V. No. 147841, In re United Motor Freight, Inc., App. No. P-77093 (June 1994).

Potential damage to existing carriers caused by the grant of contract carrier authority is shown to be considered when an order finds that an existing carrier's ability to serve the public will be impaired. RCW 81.80.070 (Contract: Public Interest Test); WAC 480-09-780. Order M. V. No. 145426, In re Mountain States L.P. Gas Co., App. No. P-75402 (August 1992).

A finding that testimony was given is not a finding that the subject of the testimony exists as a fact, and may be stricken on review. RCW 34.05.461; 34.05.464; WAC 480-09-780. Order M. V. No. 145426, In re Mountain States L.P. Gas Co., App. No. P-75402 (August 1992).

The Commission may properly adopt findings that are supported by the record and specifically found credible by the presiding officer. RCW 34.05.464; WAC 480-09-780. Order M. V. No. 145426, In re Mountain States L.P. Gas Co., App. No. P-75402 (August 1992).

Inconsistent findings in an initial order will be reviewed and corrected on administrative review. RCW 34.05.464; WAC 480-09-780. Order M. V. No. 142726, In re Saber Azizi, d/b/a Fast Courier & Assoc., App. No. P-73605 (April 1991).

The Commission will give due consideration to an administrative law judge's conclusions regarding a witness' credibility; however, if the applicant's testimony is inconsistent with the company's actions, and substantial objective evidence shows an unwillingness or inability to comply with regulatory requirements, the Commission will not adopt the proposed findings or conclusions. RCW 34.05.461(3); WAC 480-09-780(7). Order M. V. G. No. 1451, In re Sure-Way Incineration, Inc., Hearing No. GA-868 (November 1990).

A proposed finding of fact upon which no conclusion of law is based, and which is not shown to be relevant to the decision, should be deleted from the final order. RCW 34.05.461; WAC 480-09-780. Order M. V. No. 142137, In re Inland Transportation, Inc., App. No. E-19946 (October 1990).

When proposed findings of fact fail to support the proposed conclusion drawn from them, the Commission will review the evidence independently and, if it determines that the proposed findings are erroneous in light of the record as a whole, make its own findings of fact. WAC 480-09-780(7). Order M. V. No. 141041, In re Silver Eagle Co., App. No. E-19774 (March 1990).

## Chapter 480-09 WAC

### WAC 480-09-780 (cont.)

#### --- Required Form and Content of Petition for Review; Service

The Commission may strike a petition for administrative review that does not minimally comply with WAC 480-09-780 requiring that the nature of the challenge to the initial order and the desired result be clearly identified. WAC 480-09-780(4).

Order M. V. No. 146110, In re System Transfer of Longview, Inc., App. No. E-75475 (February 1993).

Order M. V. No. 146114, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (February 1993).

Order M. V. No. 145993, In re Automotive Systems, Inc., App. E-75320 (January 1993).

Order M. V. No. 145571, In re Greg Rustand, Inc., d/b/a Security Specialist Plus, App. No. P-75585 (September 1992).

Order M. V. No. 143196, In re Merle A. Endersby App. No. E-74275 (April 1991).

The Commission ordinarily will not strike a petition for administrative review that partially fails to comply with WAC 480-09-780(3) if it clearly and understandably sets forth challenges to the initial order, when doing so does not prejudice any other party.

Order M. V. No. 146379, In re Brian C. McCulloch, d/b/a Parallax Moving Systems, App. No. P-76085 (April 1993).

Order M. V. No. 144597, In re R.C. Kercheval, Inc./Katmai Transport, Inc., App. No. P-74415 (February 1992);

Order M. V. No. 144730, In re Gerald R. Severson, App. No. P-75194 (March 1992).

The proper time to contest the findings and conclusions of an initial order is on administrative review, not on reconsideration. RCW 34.05.464; 34.05.470; WAC 480-09-780; 480-09-810.

Order M. V. No. 143632, In re C & C Transfer Co., Inc., App. No. E-74249 (July 1991).

Order M. V. No. 143534, In re Mystic Transport, Inc., App. No. P-74392 (June 1991).

The Commission ordinarily will not strike a petition for administrative review filed by a pro se applicant that partially fails to comply with WAC 480-09-780's requirements if it is able to ascertain the nature of the challenge to the initial order and the desired result, when so doing does not prejudice any other party. Order M. V. No. 148807, In re Thurston, Richard d/b/a Kratos Transport, App. No. E-78363 (April 1996).

The Commission will dismiss a petition for review of an initial order based solely on evidence submitted for the first time on review when the evidence was available at the time of hearing and, even if true, would not change the result of the initial order. RCW 34.05.464; WAC 480-09-780. Order M. V. No. 147067, In re Barry Swanson Trucking, Inc., App. No. E-76555 (October 1993).

## **Chapter 480-09 WAC**

### **WAC 480-09-780 (cont.)**

Nowhere in the Commission statutes and rules is provision made for administrative review "in lieu of" that provided in RCW 34.05.464 and WAC 480-09-780; the Commission will dismiss a submittal "in lieu of a petition for review" that does not minimally comport with WAC 480-09-780(3). Order M. V. No. 146172, In re Gladys Heinrich, d/b/a Flying H. Express, App. No. E-75661 (March 1993).

A petition for administrative review filed after the expiration of a Commission-granted extension of time is untimely, and the Commission may dismiss it. RCW 34.05.464; WAC 480-09-440; 480-09-780. Order M. V. No. 145883, In re Mark Storer, d/b/a Airport, Burien, Seatac Towing, App. No. P-75927 (December 1992).

Witness affidavits that are in the nature of argument rather than new evidence are properly submitted and considered as argument in conjunction with a petition for administrative review. WAC 480-09-780. Order M. V. No. 143235, In re Emery & Clements, Inc., App. No. E-20049 (May 1991).

A petition for administrative review must be served on other parties as well as on the parties' attorneys. WAC 480-09-780. Order M. V. No. 142671, In re Sandra Fields & Dennis Scott, d/b/a D & S Couriers, App. No. P-72937 (April 1991). [This requirement was changed by amendment to the rule effective 10-2-92]

The Commission will reject a petition for administrative review that is not timely filed. RCW 34.05.464; WAC 480-09-780. Order S. B. C. No. 486, In re Clipper Navigation, Inc., d/b/a Victoria Clipper & San Juan Clipper, App. No. B-322 (March 1991).

### **WAC 480-09-800 Stay**

When the Commission believes that affected persons may be able to resolve a contested matter in a more comprehensive way than the record permits, it may stay the effect of its order and allow parties to pursue an agreed resolution. WAC 480-09-800. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996).

The Commission may impose reasonable conditions upon a stay of a Commission order to assure that the public safety is protected while parties pursue alternative dispute resolution. WAC 480-09-800. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950177 (July 1996).

The Commission may stay the effect of an order when there is a need to preserve the status quo pending the Commission's resolution of a petition for reconsideration. RCW 34.05.550; WAC 480-09-800. Order M. V. G. No. 1654, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (August 1993).



## Chapter 480-09 WAC

### **WAC 480-09-800 (cont.)**

The Commission may lift its stay of the effect of a final order if the parties have not met the conditions of the stay. RCW 34.05.467; WAC 480-09-800. Order M. V. G. No. 1646, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (July 1993).

The Commission may stay the effect of an order to avoid disruptions to customers and to allow time to prepare additional procedures. RCW 34.05.467; WAC 480-09-800. Order M. V. G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993).

A petition for stay should demonstrate irreparable harm; patent error in a final order such that reconsideration will almost certainly be granted; or substantial hardship combined with substantial possibility that the order will be modified. RCW 34.05.467; WAC 480-09-800. WUTC v. Sno-King Garbage Company, Inc./Northwest Garbage Co., Inc., Docket Nos. TG-900657 & TG-900658, Order Denying Stay (December 1991).

The Commission will not stay a final order for an indefinite time while the industry presents proposed regulatory changes, when a stay would not affect efforts to present the proposed changes and when no other benefit is shown. RCW 34.05.467; WAC 480-09-800. Order M. V. No. 141967, In re United Couriers, Inc., App. No. E-19716 (March 1990).

### **WAC 480-09-810 Reconsideration.**

#### **Cross References**

< Reconsideration of Final Order on Temporary Authority: See WAC 480-12-033.

A petition for reconsideration must demonstrate errors of law, or facts not reasonably available to petitioner at the time of entry of an order. A petition that cites no evidence that the Commission has not considered, and merely restates arguments that the Commission thoroughly considered in its final order, states no basis for relief. RCW 34.05.470; WAC 480-09-810.

Order M. V. No. 148103, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (August 1994).

In re Enoch Rowland, d/b/a Kleenwell Biohazard and General Ecology Consultants, Docket No. TG-920304 (February 1993).

Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

## Chapter 480-09 WAC

### **WAC 480-09-810 (cont.)**

A petition for reconsideration is not a second opportunity to litigate issues which were fully developed prior to entry of the final order and which were discussed and decided in the final order. Generally, a petition for reconsideration must show errors of law in the final order or facts that were reasonably unavailable to the petitioner at the time of the hearing. RCW 34.05.470; WAC 480-09-810.

Order M. V. No. 147671, In re Richard H. Henke, d/b/a Richard H. Henke Trucking, App. No. P-77008 (April 1994).

Order M. V. No. 146245, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (March 1993)

Order M. V. No. 145091, In re Carol Rowland, d/b/a C R Trucking, App. No. P-74823 (June 1992).

The mere fact that a party disagrees with a final order does not state a basis for reconsideration. A petition for reconsideration must show errors of law in the final order or facts that were reasonably unavailable to petitioner at the time of entry of an order. RCW 34.05.470; WAC 480-09-810.

Order M.V. No. 146115, In re Automotive Systems, Inc., App. No. E-75320 (Feb. 1993).

Order M.V. No. 145091, In re Carol Rowland, d/b/a C R Trucking, App. No. P-74823 (June 1992).

Order M.V.G. No. 1475, In re Sure-Way Incineration, Inc., App. No. GA-868 (Feb. 1991).

In general, the proper time to contest the findings and conclusions of an initial order is on administrative review, not on reconsideration. RCW 34.05.464; 34.05.470; WAC 480-09-780; 480-09-810.

Order M. V. No. 143632, In re C & C Transfer Co., Inc., App. No. E-74249 (July 1991).

Order M. V. No. 143534, In re Mystic Transport, Inc., App. No. P-74392 (June 1991).

Reconsideration is not an appropriate mechanism to raise an issue which the petitioner had an opportunity to present before the order was entered, but did not present, and which was not addressed in the order of which the petitioner seeks reconsideration. RCW 34.05.470; WAC 480-09-810. Order S. B. C. No. 533, In re Horluck Transportation Company, Inc. d/b/a Cross Sound Flyer, Hearing No. B-78487; In re San Juan Express, Inc., Hearing No. B-78511 (March 1997).

The Commission may reopen a record as an adjunct to reconsideration, but reopening is not warranted when the moving party does not identify any facts that it would add to the record that were not available to it at the time of entry of the final order, and appears merely to seek a second opportunity to put on its case. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 147671, In re Richard H. Henke, d/b/a Richard H. Henke Trucking, App. No. P-77008 (April 1994).

Procedural avenues that are available to review orders in adjudicative proceedings, such as reconsideration, are not available to review discretionary actions of the Commission. RCW 81.04.130; WAC 480-09-810; WAC 480-09-815. In re Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside Disposal Service and Container Hauling Service, Docket No. TG-931585 (March 1994).

## Chapter 480-09 WAC

### **WAC 480-09-810 (cont.)**

The Commission will reject a petition for reconsideration that is not timely filed. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 147521, In re Merrel Cline, d/b/a Courtesy Mobile Home Service, App. No. P-77625 (February 1994).

That the applicant did not submit sufficient information or that its information changed after the time its application for temporary authority was complete is not sufficient reason to grant reconsideration of the Commission's final order on the application. WAC 480-09-810; 480-70-130. Order M. V. G. No. 1677, In re Stericycle of Washington, Inc., App. No. GA-77304 (December 1993).

A petition for reopening filed after the entry of the final order is not timely; it may be considered in conjunction with a petition for reconsideration, but will not be considered independently. WAC 480-09-820; 480-09-810. Order M. V. No. 146245, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (March 1993).

The Commission may reopen a record as an adjunct to reconsideration, but generally will deny reopening to receive additional evidence that was available to the movant at the time the final order was entered. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 146087, In re R. W. Henricksen, Inc./Cornerstone Construction, Inc., App. No. P-75387 (February 1993).

A petition for reconsideration that merely argues that the Commission did not adequately consider the evidence of record, or merely reargues a position taken at hearing or on review, does not state a basis for relief. WAC 480-09-810. Order M. V. No. 145902, In re ENA Couriers (Seattle), Inc., App. No. E-75722 (December 1992).

An allegation by a solid waste carrier that it did not receive a Commission order does not support reconsideration when the carrier failed to report a change in the address of its principal place of business as required by WAC 480-70-040, did not leave a forwarding address with the post office, and the Commission order was properly served on the carrier as provided in WAC 480-09-120(2)(c). WAC 480-09-120; 480-09-810; 480-70-040. Order M. V. C. No. 1992, WUTC v. Medical Waste Management Systems, Inc., Hearing No. H-5004 (December 1992).

Mootness is not a bar to Commission consideration of matters of public interest. RCW 34.05.470; WAC 480-09-810. Order M. V. C. No. 1992, WUTC v. Medical Waste Management Systems, Inc., Hearing No. H-5004 (December 1992).

The Commission on reconsideration may correct an error in a final order. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 145721, In re Gerald W. Southards d/b/a J-S Trucking, App. No. P-75956 (December 1992).

The Commission will not ordinarily hear arguments on reconsideration that could have been presented on administrative review, but may, on its own motion, consider issues of general public interest that are raised in a deficient petition for reconsideration. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 144941, In re Rissler Contracting Company, App. No. E-75297 (May 1992).

## Chapter 480-09 WAC

### **WAC 480-09-810 (cont.)**

On reconsideration, the Commission may reopen the record to receive late-discovered evidence when pertinent evidence would appear to cast substantial doubt upon an applicant's fitness to conduct operations.

In such a case, the danger of allowing an unfit carrier to operate, coupled with the applicant's burden to demonstrate its fitness, may outweigh the need for finality in hearings. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 144397, In re Safco Safe Transport, Inc., App. No. P-73623 (December 1991); reaffirmed, Order M. V. No. 145701 (October 1992).

The Commission may decide all relevant issues on a petition for reconsideration. RCW 34.05.470; WAC 480-09-810. Order M. V. G. No. 1484, In re Bayside Waste Hauling and Transfer, Inc., d/b/a Kennewick Disposal, App. No. GA-902 (April 1991).

The Commission will reject a petition for reconsideration that does not include a certificate showing service of the petition upon all parties. RCW 34.05.437; WAC 480-09-120; WAC 480-09-810. Order M. V. No. 142172, WUTC v. K-Lines, Inc., Hearing No. H-4990 (October 1990).

Evidence that was reasonably available, but not presented at the time of hearing, cannot form a basis for reconsideration. RCW 34.05.470; WAC 480-09-810(3). Order M. V. No. 141994, In re Ronald E. & Gerald H. Thompson and Bobby R. Godwin d/b/a T & G Trucking Co., App. No. P-73851 (September 1990).

Absent information on which the Commission could base a conclusion that a witness was not reasonably available to the petitioner at the time of hearing, the Commission will deny a petition for reconsideration. RCW 34.05.470; WAC 480-09-810(3). In re National Railroad Passenger Corp., Docket No. TR-2248 (August 1990).

Documents must be filed in compliance with the rules in order to receive Commission consideration: The Commission must deny a petition for reconsideration that was not timely filed. A party's service upon the other parties and the assistant attorney general, does not constitute "filing" with the Commission. RCW 34.05.470; WAC 480-09-120(1)(c); WAC 480-09-810(2). In re National Railroad Passenger Corp., Docket No. TR-2250 (August 1990).

A petition for reconsideration must be served on all parties of record, and it must contain a certificate of service. WAC 480-09-120(2)(d); WAC 480-09-810(2). In re National Railroad Passenger Corp., Docket No. TR-2248 (August 1990).

Reconsideration is a fairly limited remedy, available only to correct errors of law or patent factual errors, or to allow consideration of factual evidence that was not reasonably available to the petitioner at the time of hearing. RCW 34.05.470; WAC 480-09-810(3). Order S. B. C. No. 472, In re Belairco, Inc., App. No. B-313 (August 1990).

**WAC 480-09-810 (cont.)**

If a special investigator's testimony is discussed and is completely and accurately summarized in the memorandum portion of the initial order, the Commission's failure to set out that testimony in a separately numbered finding of fact does not, alone, constitute grounds for reconsideration since the Commission considered the entire record in reaching its final decision. RCW 81.04.410; WAC 480-09-810. Order S. B. C. No. 472, In re Belairco, Inc., App. No. B-313 (August 1990).

On reconsideration, the Commission may correct errors in the final order. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 141375, In re Nello Pistoresi & Son, Inc., App. No. E-19812 (May 1990).

The function of reconsideration is to correct errors of law or identify factual information that was not available at the time a final order was entered; on reconsideration, the Commission does not ordinarily re-evaluate the evidence. RCW 34.05.470; WAC 480-09-810. Order M. V. No. 141271, In re Becker Trucking, Inc. d/b/a Becker Trucking; Becker Express, App. No. 19787 (April 1990).

The Commission will not accept a petition for reconsideration of an order on reconsideration. WAC 480-09-810. Order M. V. G. No. 1421, In re Superior Refuse Removal Corp., App. No. GA-899 (February 1990).

A petition for reconsideration should demonstrate errors of law, patent factual error or facts reasonably unavailable to the petitioner at the time of entry of an order. The Commission will not reconsider its order upon a petitioner's challenge to Commission evaluation of the evidence. WAC 480-90-810. Order M. V. No. 140840, In re Mayne Nickless Courier Systems, Inc., d/b/a Bucky's Courier Systems, App. No. P-72291 (January 1990).

A petition for reconsideration that merely reargues the position taken at the hearing or on exception does not state a basis for reconsideration. WAC 480-09-810. Order M. V. No. 140293, In re Jim Elsbree, d/b/a J & P Trucking, App. No. P-71880 (October 1989).

A petition for reconsideration must demonstrate errors of law, or facts not reasonably available to the petitioner at the time of entry of an order. In other words, a petition for reconsideration must present arguments that change the circumstances presented to, or the view of, the Commission. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Reconsideration will be granted when there is some circumstance beyond the control of the petitioner that prevented the petitioner from obtaining a fair hearing. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Reconsideration is available within a narrow period after entry of a final order and may include reopening of the record. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

## **Chapter 480-09 WAC**

### **WAC 480-09-810 (cont.)**

Petitions for reconsideration that merely argue that the evidence of record was not adequately considered by the Commission will be denied. Similarly, a petition that merely reargues a position taken at the hearing does not state a basis for relief. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Reconsideration will be granted to correct an erroneous finding of fact. Erroneous statements in the memorandum portion of an order also may be corrected on reconsideration. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Reconsideration is generally proper only when there is a showing that correction of the alleged errors would materially affect the outcome. RCW 34.04.090; 34.05.470; WAC 480-08-250; 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

When a party petitioning for reconsideration fails to state new arguments or evidence reasonably unavailable at the time of the hearing, the petition should be denied. WAC 480-09-810. Order M. V. C. No. 1834, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No. D-2566 (August 1989).

Reconsideration is proper when there are errors of fact or law in the final order. WAC 480-09-810. Order M. V. C. No. 1834, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No. D-2566 (August 1989).

When an order finds that protestant provided satisfactory service to a portion of the territory sought, the Commission will reconsider its final order granting authority to applicant. RCW 81.68.040; WAC 480-09-810. Order M. V. C. No. 1834, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No. D-2566 (August 1989).

### **WAC 480-09-815 Amendment or rescission.**

Procedural avenues that are available to review orders in adjudicative proceedings, such as reconsideration, are not available to review discretionary actions of the Commission. RCW 81.04.130; WAC 480-09-810; WAC 480-09-815. In re Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside Disposal Service and Container Hauling Service, Docket No. TG-931585 (March 1994).

Alteration of an order under RCW 81.04.210 is improper when the element sought to be altered is based on findings of fact and conclusions of law not shown to be erroneous which are inconsistent with the proposed alteration. RCW 81.04.210; WAC 480-09-815. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

**WAC 480-09-815 (cont.)**

One carrier's mere request to amend its permit to allow in-state disposal of wastes has no bearing on the validity of a prior Commission order ruling that disposal arrangements cancelable on 90-days' notice are insufficient to grant authority to another carrier. RCW 81.04.200; 81.04.210; WAC 480-09-815; 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

Initiating the process to alter an order is discretionary with the Commission; it will not begin the process without good reason to do so. RCW 81.04.210; WAC 480-09-815. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

The Commission does not err when it fails to consider an argument based in facts known to a party when the party fails to raise the argument. RCW 81.04.210; WAC 480-09-815; 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

A petition to amend an initial order is procedurally incorrect because an initial order is not an order of the Commission. RCW 81.04.210; WAC 480-09-815. Order M. V. No. 142703, In re L.L. Buchanan & Co., Inc., App. Nos. P-3065, E-801 (February 1991).

**WAC 480-09-820 Rehearing or reopening.**

Subsections of rule:

- (1) Rehearing.
- (2) Reopening.

**Cross References**

- < Reopening to Contest Dismissal After Failing to Appear at Hearing: See WAC 480-09-700.
- < Reopening on reconsideration: See WAC 480-09-810.
- < **See Index for references to procedural statutes and for references to former procedural rules**

**--- Rehearing**

Rehearing is not an appropriate mechanism to address an issue which was known to the petitioner at a time provided for raising such matters, and which petitioner chose not to raise. RCW 81.04.200; WAC 480-09-820. Order S. B. C. No. 533, In re Horluck Transportation Company, Inc. d/b/a Cross Sound Flyer, Hearing No. B-78487; In re San Juan Express, Inc., Hearing No. B-78511 (March 1997).

A petition for rehearing must show changed circumstances occurring since entry of the final order, that either were not anticipated by the Commission or were unanticipated results of the final order. WAC 480-09-820. Order M. V. No. 146087, In re R. W. Henricksen, Inc./Cornerstone Construction, Inc., App. No. P-75387 (February 1993).

A petition for rehearing is not properly filed until the proceeding is concluded and a final order entered. WAC 480-09-820. Order M. V. No. 145039, In re Woody's City Cab, Inc., d/b/a Woody's Cab/ Mr. Ed's Cabs, App. No. P-75579 (May 1992).

## **Chapter 480-09 WAC**

### **WAC 480-09-820 (cont.)**

An order's finding of need for services relates to facts found in the hearing. On petition for alteration or rehearing filed four years after the hearing, the underlying circumstances found as facts cannot be assumed to remain valid. RCW 81.77.040; WAC 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

The Commission may consider the availability of alternative procedures to rehearing, such as hearing the issues in the context of a new application, when deciding to accept or reject a petition for rehearing. RCW 81.04.200; WAC 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

An allegation of unauthorized airporter operations in violation of a prior Commission order provides a sufficient basis for rehearing; a carrier's operation in violation of an order is a changed condition not contemplated in the order. RCW 81.04.200; WAC 480-09-820. Order M. V. C. No. 1947, Evergreen Trails, Inc., d/b/a Grayline Of Seattle v. San Juan Airlines, Inc. d/b/a Shuttle Express, Docket No. TC-900407 (February 1992).

The Commission may make a preliminary decision under RCW 81.04.200 and RCW 34.05.416 whether a petition for rehearing should be rejected or should be set for hearing. RCW 81.04.200; 34.05.416; WAC 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

A final order that has been reviewed administratively and appealed to superior court does not qualify for rehearing under the six-month provision of RCW 81.04.200; this is so even when judicial review is voluntarily abandoned. RCW 81.04.200; WAC 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

Operating airporter service while owning only bus authority can support rehearing. It can also support a complaint under RCW 81.04.110; 81.04.200; 81.68.040; WAC 480-09-820. Order M. V. C. No. 1935, In re Evergreen Trails, Inc., d/b/a Evergreen Trailways to Reddy Leasing, Inc. d/b/a Bellingham Sea-Tac Airporter, App. No. D-75052 (November 1991).

When a carrier failed to file its annual report and it repeatedly failed to respond to notices from the Commission, the subsequent cancellation of the carrier's permit authority was neither a Commission error nor an unintended result. The carrier's explanation that its employee did not understand the consequences of failure to file does not state a basis for rehearing the cancellation proceeding. RCW 80.04.200; WAC 480-09-820. Order M. V. No. 141979, WUTC v. K-Lines, Inc., Hearing No. H-4990 (September 1990).

The Commission may grant a petition for rehearing of an original application for authority in order to resolve internally inconsistent permit language and correct apparent errors. RCW 81.04.200; RCW 81.80.100; WAC 480-09-820(1). Order M. V. No. 141669, In re L. L. Buchanan & Co., Inc., App. Nos. P-3065 and E-801 (July 1990).



**WAC 480-09-820 (cont.)**

A petition for rehearing must show changed circumstances or injurious results not anticipated by the Commission at the time the final order was entered. RCW 80.04.200; WAC 480-09-820(1). Order M. V. No. 141271, In re Becker Trucking, Inc. d/b/a Becker Trucking; Becker Express, App. No. 19787 (April 1990).

A petition for rehearing must show changed circumstances, or injurious results not anticipated by the Commission at the time of entry of the final order. Rehearing is discretionary with the Commission and is designed to deal with changed circumstances injurious to the party occurring since the entry of a final order which were not considered by the Commission, or to correct defects in an order which were present when it was entered. Changed circumstances will only support a petition for rehearing if those circumstances were not considered by the Commission or if there is an unanticipated result. RCW 81.04.200; WAC 480-08-250; 480-09-820(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

A petition for rehearing may be filed any time after the final order is entered. RCW 81.04.200; WAC 480-08-250; 480-09-820(1). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

The Commission's failure to consider an amended contract submitted after the close of the hearing will not warrant rehearing if consideration of the amended contract would not change the result of the order. WAC 480-08-250; WAC 480-09-820. Order M. V. No. 139227, In re Parker Refrigerated Service, Inc., App. No. P-71514 (March 1989).

**--- Reopening**

A demonstration that information was not reasonably available to the petitioner at the time of hearing is a prerequisite for reopening. WAC 480-09-820.

Order M. V. No. 147257, In re Bar-Nunn, Inc., App. No. P-76693 (December 1993).  
Order M. V. C. No. 1894, In re Marcia Sams, d/b/a Rose's Limousine, Hearing No. D-2590 (December 1990).

A desire for an opportunity to present different, better evidence after receiving an adverse initial order does not warrant reopening. WAC 480-09-820.

Order M. V. No. 147200, In re Hays Home Delivery (Washington), Inc., d/b/a Hays Home Delivery, App. No. P-76090 (November 1993).  
Order M. V. No. 145861, In re Robert H. Culpepper d/b/a Rubicon River Railroad, App. No. P-76139 (December 1992).

**WAC 480-09-820 (cont.)**

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"Newly discovered evidence" that would support reopening means evidence that existed at the time of the hearing but which was not reasonably available to the petitioner. WAC 480-09-820.

Order M. V. No. 145091, In re Carol Rowland, d/b/a C R Trucking, App. No. P-74823 (June 1992).

Order M. V. 141375, In re Nello Pistoresi & Son, Inc., App. No. E-19812 (May 1990).

The Commission will deny reopening a proceeding when reopening is sought in order to present information that was available at the time of the hearing and is not essential to the result of the initial order. WAC 480-09-820. Union Pacific Railroad Company v. Spokane County, Docket No. TR-950176 (July 1996).

New evidence submitted with a petition for review without a motion to reopen and showing that reopening to receive new evidence is appropriate will be stricken. RCW 34.05.464; WAC 480-09-780; 480-09-820. Order M. V. No. 148366, In re Daniel C. Lawson, d/b/a Lawson Trucking/Schneider Trucking, Inc., App. No. P-77823 (December 1994).

New evidence of unmet need should be presented in a new application proceeding. Generally, reopening under this circumstance is not appropriate. WAC 480-09-820. Order M. V. No. 147257, In re Bar-Nunn, Inc., App. No. P-76693 (December 1993).

A petition for reopening filed after the entry of the final order is not timely; it may be considered in conjunction with a petition for reconsideration, but will not be considered independently. WAC 480-09-820; 480-09-810. Order M. V. No. 146245, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (March 1993).

Reopening to receive additional evidence will be denied when the information offered was reasonably discoverable by the offering party at the time of hearing. WAC 480-09-820. Order M. V. No. 146245, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Services, App. No. P-75781 (March 1993).

Written evidence will generally not be accepted in contested proceedings after the record closes without sufficient cause to reopen the hearing and, if appropriate, the opportunity for other parties to question the source of the evidence. RCW 34.05.464; 34.05.461; WAC 480-09-820. Order M. V. No. 146279, In re Gayle G. Reed, d/b/a Gayle Reed Trucking, App. No. P-76302 (March 1993).

When an essential witness is unexpectedly unavailable for hearing, the appropriate procedure is for the sponsoring party to request a continuance. An allegation that an essential witness was unavailable, first made in a petition for reopening after the hearing and entry of an initial order adverse to the party, will not support reopening. WAC 480-09-440; 480-09-820. Order M. V. No. 145861, In re Robert H. Culpepper d/b/a Rubicon River Railroad, App. No. P-76139 (December 1992).

**WAC 480-09-820 (cont.)**

Reopening generally will not be granted to receive new or different evidence unless that evidence is newly discovered and was not reasonably available at the time of the hearing. WAC 480-09-820. Order M. V. No. 145820, In re Joe Guglielmelli, Jim Lilwall & Rick Spiess, d/b/a Joe Guglielmelli & Associates, App. No. E-75746 (November 1992).

When public convenience and necessity is alleged to be substantially changed from that presented at the hearing, a new application is the proper forum for developing that evidence. Generally, reopening or rehearing under this circumstance is not appropriate. WAC 480-09-820. Order M. V. No. 144701, In re Carol Rowland d/b/a C R Trucking, App.No. P-74823 (March 1992).

The Commission does not err when it fails to consider an argument based in facts known to a party when the party fails to raise the argument. RCW 81.04.210; WAC 480-09-815; 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

One carrier's mere request to amend its permit to allow in-state disposal of wastes has no bearing on the validity of a prior Commission order ruling that disposal arrangements cancelable on 90-days' notice are insufficient to grant authority to another carrier. RCW 34.05.452; 81.04.200; 81.04.210; WAC 480-09-815; 480-09-820. Order M. V. G. No. 1533, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1992).

Reopening will be denied when the information offered was reasonably discoverable by the offering party at the time of the hearing. WAC 480-09-820. Order M. V. C. No. 1899, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No.D-2589 (March 1991); modified, Order M. V. C. No. 1909 (May 1991).

Information is not reasonably undiscoverable at the time of the hearing when the person seeking to submit it had full control over whether, and when, to obtain it. WAC 480-09-820. Order M. V. C. No. 1899, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No.D-2589 (March 1991); modified, Order M. V. C. No. 1909 (May 1991).

Reopening to receive additional evidence will be denied when the evidence was not unavailable at the time of the hearing and no other good and sufficient cause for reopening is shown. WAC 480-09-820. Order M. V. No. 143235, In re Emery & Clements, Inc. App. No. E-20049 (May 1991).

A petition for reopening filed after the entry of the final order is not timely. WAC 480-09-820(2). Order M. V. G. No. 1472, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1991).

The existence of newly-created evidence is not grounds for reopening; reopening is not designed to allow a party to supplement its case with evidence that the party did not present at the hearing for reasons within its control. WAC 480-09-820(2). Order M. V. G. No. 1472, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1991).

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### **WAC 480-09-820 (cont.)**

Reopening may be authorized after the close of the record and before the final order is entered. WAC 480-09-820(2). Order M. V. 141375, In re Nello Pistoresi & Son, Inc., App. No. E-19812 (May 1990).

When fairness requires that additional evidence be accepted, and that a revised initial order be entered, the Commission may grant a petition for remand to the Administrative Law Judge. WAC 480-09-820(2). Order M. V. No. 140997, In re A Mobile Home Doctor, Inc., App. No. P-72744 (March 1990).

Reopening will not be granted to receive new or different evidence unless that evidence is newly discovered and was not reasonably available at the time of the hearing. RCW 34.04.100(2); WAC 480-09-820(2)(b). Order M. V. No. 140840, In re Mayne Nickless Courier Systems, Inc., d/b/a Bucky's Courier Systems, App. No. P-72291 (January 1990).

Reopening to receive additional evidence will be denied when the additional evidence is not essential to a decision and the evidence was available or reasonably discoverable at the time of the hearing. WAC 480-09-820(2). Order M. V. No. 140608, WUTC v. Rontra Freight, Hearing No. H-4990 (December 1989).

A petition to reopen should show circumstances not reasonably foreseeable during the initial presentation of evidence. The petition should offer allegations of surprise or of newly discovered evidence that was not reasonably available to the petitioner at the time of the hearing. WAC 480-08-250 and 050(16); 480-09-820(2). Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

Under WAC 480-09-820(2), reopening is available only until entry of a final order. However, reconsideration may include reopening of the record for the receipt of additional evidence. WAC 480-09-820(2); 480-09-810. Order M. V. No. 140273, In re Thomas C. Kolean and James B. Stewart, d/b/a Olympic Transport, App. No. P-72389 (September 1989).

## **CHAPTER 480-12 WAC**

### **MOTOR CARRIERS\*\*\***

#### **WAC 480-12-030 Applications.**

The only way to secure Commission approval of the use of a business name is through the procedures that the legislature and agency rules have established for doing so. A citizen may not rely on the statement of an agency employee when that is not the proper way to get the agency's official view. WAC 480-12-030; estoppel. In re Cascade Movers of Washington, Inc., Docket No. P-78560 (October 1996).

A contract carrier with authority to transport specified commodities statewide may file new contracts without violating RCW 81.80.080 or WAC 480-12-030, or needing rate docket hearings. RCW 81.80.080 and WAC 480-12-030 deal with applications for new authority, and under WAC 480-12-255(6) and WAC 480-12-295(9), a contract carrier with statewide authority for specified commodities may file its contracts without a rate docket hearing. Order M. V. No. 136191, In re Pony Express Courier Corporation of America, d/b/a Pony Express Courier, App. No. E-19233 (July 1987).

#### **WAC 480-12-031 Petition to amend permit to incorporate commercial zone authority.**

The Commission will grant commercial zone authority to any applicant who exercised qualifying permit authority between two points within a commercial zone. The Commission disregards a 60-day limitation in the rule in order to make the provision consistent with the statute. RCW 81.80.040; WAC 480-12-031. Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

Eligibility for commercial zone authority is determined by the existence of qualifying permit authority, not by the identity of the applicant. An applicant for commercial zone authority who received permit authority by transfer may subsequently show that the permit acquired qualified for commercial zone authority. RCW 81.80.400; WAC 480-12-031. Order M. V. No. 132604, In re Evergreen Western Express Service, Inc.

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\*\*\* NOTE: The Federal Aviation Administration Authorization Act of 1994, P.L. 103-305, enacted in August 1994, preempted state economic regulation of intrastate motor carrier operations with the exception of household goods movers and common carrier brokers effective January 1, 1995. States are permitted to continue size and weight and hazardous materials enforcement, and safety and insurance regulation. Sections of Chapter 480-12 WAC that did not apply to household goods movers or brokers were repealed, and a new Chapter 480-14 WAC was created for all other carriers. Most of the then-existing safety regulations were repeated in the new chapter, and it set out new procedures for applications.

d/b/a Western Express Service, Inc., App. No. P-Z-69612 (October 1985).

**WAC 480-12-033 Temporary permits.**

The statute barring the refiling of an application within six months after the Commission denied it applies to applications of the same type and not to applications for different authority; permanent authority and temporary authority are different types of authority. RCW 81.80.110; 81.80.170; WAC 480-12-033. Order M. V. No. 147519, In re Hays Home Delivery (Washington), Inc., d/b/a Hays Home Delivery, App. No. P-77668 (February 1994).

The Commission will reject a protest to a grant of temporary authority if the protest is not accompanied by the notarized statement required by WAC 480-12-033(4)(b). Order M. V. No. 147362, In re Rick and Jess Penfold, d/b/a J.R. Penfold, App. No. P-77089 (January 1994).

The Commission may change a permit to remove language that might be misconstrued as granting authority that the applicant did not seek and the Commission did not intend to grant. RCW 81.80.170; WAC 480-12-033(5). Order M. V. No. 147362, In re Rick and Jess Penfold, d/b/a J.R. Penfold, App. No. P-77089 (January 1994).

The primary reason for a grant of temporary authority is the proximity of the need for service, rather than the duration of the need for service. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146902, In re Don B. Hightower, d/b/a The Navajo Trucking, App. No. E-76397 (September 1993).

Temporary authority is an appropriate solution to transportation shortages that occur during peak harvest seasons, but it is not necessarily the exclusive solution. RCW 81.80.070 (entry common carriers: need for service); RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146902, In re Don B. Hightower, d/b/a The Navajo Trucking, App. No. E-76397 (September 1993).

RCW 81.80.170, rather than RCW 81.80.070, governs a grant or denial of temporary authority. RCW 81.80.070 (entry common carriers: need); RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146831, In re Rombough, Scot & Tamura, Joseph, d/b/a R/T Delivery, App. No. P-76921 (August 1993).

The Commission may grant temporary authority upon a showing that there is an immediate and urgent unmet need for transportation, or that other circumstances indicate that a grant of authority is consistent with the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146831, In re Rombough, Scot & Tamura, Joseph, d/b/a R/T Delivery, App. No. P-76921 (August 1993).

Temporary authority is based upon a prima facie showing that a grant of authority is in the public interest. Legal issues in a companion application for "permanent" authority that may also bear on the propriety of a grant of temporary authority may be left for resolution in the companion case when they require a studied review and no patent violation of law or rule is involved. RCW 81.80.170; WAC 480-12-033. Order M. V. 146756, In re Harris Transportation Company, App. No. P-76932 (July 1993); Order M. V. No. 146755, In re McCall Oil and Chemical, d/b/a Cascade Petroleum, App. No. P-76934 (July 1993).

## **Chapter 480-12 WAC**

### **WAC 480-12-033 (cont.)**

A grant of temporary authority pending transfer that would create duplicating authority in violation of WAC 480-12-050(5) is contrary to the public interest. RCW 81.80.170; WAC 480-12-033; 480-12-050(5). Order M. V. No. 146588, In re Becker Trucking, Inc., App. No. P-76919 (June 1993); Order M. V. No. 146589, In re Collins Transport Service, Inc., App. No. P-76894 (June 1993).

The distinction between emergency temporary authority and temporary authority relates to the immediacy of the shipper's need rather than to the duration of the need; when the time or circumstances reasonably permit the filing and processing of an application for temporary authority, emergency temporary authority is not appropriate. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146085, In re T & T Milk Transport, Inc., App. No. P-76464 (January 1993).

Temporary authority is an appropriate solution to temporary transportation shortages that occur during peak harvest seasons. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146085, In re T & T Milk Transport, Inc., App. No. P-76464 (January 1993).

When the protestant's submission and a supplemental Commission investigation reveal that the shipper no longer requires the services that supported a grant of temporary authority, the Commission may rescind the grant. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146085, In re T & T Milk Transport, Inc., App. No. P-76464 (January 1993).

The Commission may impose special terms and conditions in connection with a grant of temporary authority, including limiting the duration of a temporary permit. WAC 480-12-033. Order M. V. No. 146085, In re T & T Milk Transport, Inc., App. No. P-76464 (January 1993).

A hearing is not required on an application for temporary authority merely because the protestant has submitted credible rebuttal evidence; the Commission has discretion to order a brief adjudicative hearing. RCW 81.80.170; WAC 480-12-033; WAC 480-09-500. Order M. V. No. 145831, In re Puregro Company, d/b/a Northwest Trucking, App. No. P-76229 (December 1992).

The process of granting temporary authority is designed to be a practical answer to pressing needs of the shipping public. It is not intended to finally resolve all controverted facts. Factual controversies generally must be resolved in a companion application for continuing ("permanent") authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145831, In re Puregro Company, d/b/a Northwest Trucking, App. No. P-76229 (December 1992).

To allow a protesting carrier to come in after an application has commenced and effectively block that application by offering service to a supporting shipper when it has previously shown no interest in providing the service or has refused to provide service would be inconsistent with the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145924, In re Armored Express, Inc., App. No. P-76432 (December 1992).

The law prohibiting the refiling of an application applies to applications of the same type, and not to applications for different services (i.e., temporary/permanent). RCW 81.80.110; 81.80.170; WAC 480-12-033; 480-12-045. Order M. V. No. 145703, In re Harlan Skavlem, d/b/a E.R.S. Trucking, App. No. P-76155 (October 1992).



**WAC 480-12-033 (cont.)**

The fact that the shippers supporting an application for temporary authority have not appeared at any hearing on an application for parallel "permanent" authority is not a reason for rejecting their supporting affidavits in the temporary authority proceeding. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145703, In re Harlan Skavlem, d/b/a E.R.S. Trucking, App. No. P-76155 (October 1992).

A decision on an application for continuing or "permanent" authority does not "reverse" a decision granting temporary authority, and a grant of temporary authority does not carry with it any obligation or expectation that parallel permanent authority will be granted. The tests are different, and the grant of temporary authority under pertinent tests has no bearing on the Commission's decision regarding permanent authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145740, In re Star Moving & Storage, Inc./United Couriers, App. Nos. P-73707 & P-75799 (October 1992).

There is a public interest in today's regulatory environment in allowing temporary authority for carriers to serve commonly-owned companies with specialized shipping needs. WAC 480-12-033. Order M. V. No. 145603, In re Puregro Company d/b/a Northwest Trucking, App. No. P-76229 (September 1992).

When an administrative investigation reveals that current permit holders are ready to meet the need expressed by the supporting shippers, the applicant's assertion that none of the current permit holders can provide a responsive service does not provide a credible showing of an immediate or urgent need for proposed temporary authority or otherwise demonstrate that a grant of temporary authority is consistent with the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145079, In re International Port Services, Inc., d/b/a Northwest Mail Delivery Service, App. No. P-75951 (June 1992).

When the Commission's field investigation shows that existing carriers are able, ready, and willing to perform the transportation the shipper requires, the Commission will deny an application for temporary contract authority absent some other showing that a grant of temporary authority is in public interest. WAC 480-12-033. Order M. V. No. 144895, In re Desi Thompson, d/b/a San-Car Trucking, App. No. P-75839 (April 1992).

A shipper's contract with a carrier, standing alone, does not demonstrate that a grant of temporary contract carrier authority is in the public interest. WAC 480-12-033. Order M. V. No. 144895, In re Desi Thompson, d/b/a San-Car Trucking, App. No. P-75839 (April 1992).

The Commission may question the credibility of shipper letters supporting an application for temporary authority when they are in a common hand and prepared form. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 144472, In re Expedited Express, Inc., App. No. P-75548 (January 1992).

The Commission may cancel a temporary permit if it determines that the temporary permit was not issued in the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 144565, In re United Couriers, Inc. d/b/a United Couriers Northwest, App. No. P-75530 (January 1992).

## **Chapter 480-12 WAC**

### **WAC 480-12-033 (cont.)**

An application for temporary authority differs from an application for permanent authority, is made to accomplish a different purpose, and is judged by different standards. An application for temporary authority will only be granted when the Commission finds that the grant is consistent with the public interest, pursuant to WAC 480-12-033. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 143382, In re Pioneer Express, Incorporated, d/b/a Pioneer Express, App. No. P-74907 (May 1991).

Temporary authority may be granted when supporting shippers have specific needs, when the needs are not being met by existing carriers, and when the needs are immediate and urgent.

RCW 81.80.170; WAC 480-12-033. Order M. V. No. 143182, In re David M. Adams, d/b/a County Wide Messenger and Delivery Service, App. No. P-74710 (April 1991).

The Commission may consider the possible effects of a break in service when it determines whether to grant an application for temporary authority pending a transfer of permit authority. WAC 480-12-033(2). Order M. V. No. 141823, In re Westpan Hauling, Inc., App. No. P-73904 (October 1990).

An employee has no authority to waive the 10-day time limit for filing a protest; nor will the Commission consider a protest that was not notarized and that does not state that the protestants offered their services to the applicant's supporting shippers. WAC 480-12-033. Order M. V. No. 141806, In re Roland Schloer, App. No. TN-649 (August 1990).

An application for temporary common carrier authority, pending acquisition of authority by transfer, will be denied when the applicant has not shown that any carrier assets were endangered that the temporary authority might preserve, or that any pressing shipper need for the service exists. RCW 81.80.170; RCW 81.80.270; WAC 480-12-033. Order M. V. No. 141326, In re Wallace Colville Motor Freight, Inc., App. No. P-73661 (April 1990).

The existence of temporary authority cannot be considered in determining whether the statutory standard for a grant of continuing authority has been met. RCW 81.80.070 (entry common carriers: need for service); RCW 81.80.170; WAC 480-12-033. Order M. V. No. 141271, In re Becker Trucking, Inc. d/b/a Becker Trucking; Becker Express, App. No. P-19787 (April 1990).

Termination of temporary authority, at the conclusion of the adjudication of a related application for continuing authority, is not a deprivation of a right. RCW 81.80.020; RCW 81.80.170; WAC 480-12-033. Order M. V. No. 141271, In re Becker Trucking, Inc. d/b/a Becker Trucking; Becker Express, App. No. 19787 (April 1990).

When the Commission enters a final order denying an application for permanent authority, the temporary permit expires on the last day for seeking judicial review of that order, whether or not review is actually sought. Only when the reviewing court specifically sets a later expiration date does the temporary permit continue beyond the last day for seeking review of a Commission final order. RCW 34.04.170; RCW 34.05.422; WAC 480-12-033(3). Order M. V. No. 140505, In re Jobbers Freight Service, Inc., App. No. P-70386 (December 1989).

### **WAC 480-12-033 (cont.)**

## Chapter 480-12 WAC

Unneeded authorities have a detrimental effect on the regulated environment and temporary authorities should be cancelled as soon as possible after the application for permanent authority is denied. RCW 81.80.020; RCW 81.80.170. Order M. V. No. 140505, In re Jobbers Freight Service, Inc., App. No. P-70386 (December 1989).

Temporary authorities are designed, in part, to meet urgent needs on short notice. The urgent nature of the needs plus the short-lived nature of the authority require expedited processing. Reviewing conflicting factual claims of parties in a full hearing could take longer than the temporary authority would be effective, and would paralyze the abilities of transportation companies to meet urgent needs. RCW 81.80.170; WAC 480-12-033(1). Order M. V. No. 139007, In re Community Enterprises of Issaquah, App. No. P-71976 (March 1989).

A grant of temporary authority to meet immediate transportation needs may be consistent with the public interest, despite possible questions on one or more issues. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 139293, In re Common Carriers, Inc., App. No. P-72611 (March 1989).

The temporary-application process is an expedited one to provide quick answers to immediate shipping need; it is more superficial than the continuing-authority application process and the test for a grant of temporary authority is different from that used for a grant of continuing authority. WAC 480-12-033. Order M. V. No. 138234, In re Inter-run, Inc., d/b/a Inter-run, App. No. P-71544 (August 1988).

When there is no immediate and urgent need for temporary authority to operate as a common carrier and when a petition for reconsideration of denial alleges no error of law or additional evidence not previously available, the petition should be denied. WAC 480-12-033. Order M. V. No. 138007, In re Highway Enterprises, Inc., App. No. P-72039 (June 1988).

A finding of fitness in a grant of temporary authority does not ban inquiry into the applicant's fitness in a parallel-filed transfer application. RCW 81.80.070; WAC 480-12-033(2). Order M. V. No. 137290, In re All West Auto Transport Co., App. No. P-71755 (March 1988).

The fact that an applicant has purchased equipment for its temporary authority does not bind the Commission to a grant for continuing authority when the requirements for a grant have not been met. WAC 480-12-033. Order M. V. No. 137346, In re Smith Transport, Inc., App. No. P-71155 (February 1988).

Temporary authority that will terminate when continuing authority is granted or denied will not amend or affect a pending application for the continuing authority sought. WAC 480-12-033(3). Order M. V. No. 136836, In re Pony Express Courier Corporation, App. No. P-71314 (November 1987).

Applications for temporary and emergency temporary authority are handled separately from an application for continuing authority. RCW 81.80.070; WAC 480-12-033. Order M. V. No. 136789, In re Roy N. Carlson, Inc., App. No. P-70991 (October 1987).

### **WAC 480-12-033 (cont.)**

Oral hearing may not be afforded to review a grant of temporary authority, due to the short time frame necessary to deal with such applications. WAC 480-12-033. Order M. V. No. 136425, In re Randy &

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Denise Cooper and Jon & Kelly Port d/b/a Central Washington Mobile Home Transport & Service, App. No. P-71354 (August 1987).

A Commission staff letter which erroneously indicates that an application for temporary authority will be granted creates no rights in the applicant. The application may subsequently be denied for inconsistency with the public interest. Estoppel; RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134871, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70607 (October 1986).

The test for a grant of temporary authority is whether the grant is consistent with the public interest. When two existing carriers stand ready to perform the service, the Commission will deny an application for temporary authority absent some other showing of public interest in an additional grant. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134647, In re Thunderbird Lubrications, Inc., App. No. P-70485 (September 1986).

An application will be denied, even in light of amendments designed to satisfy the protestant's objections, when a grant of temporary authority is not shown to be consistent with the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134647, In re Thunderbird Lubrications, Inc., App. No. P-70485 (September 1986).

An application for temporary authority is different from an application for continuing authority. A grant of temporary authority has no bearing on the appropriateness of a grant of continuing authority, and a grant of continuing authority has no bearing on the appropriateness of a grant of temporary authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134470, In re Fin-A-Key Express, Inc., App. No. P-70451 (August 1986).

An application for temporary authority is not a "renewal" of an application for continuing authority that was denied; it does not violate the prohibition against an applicant's reapplication within six months of the entry of a final order denying continuing authority. RCW 81.80.110; RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134470, In re Fin-A-Key Express, Inc., App. No. P-70451 (August 1986).

An applicant for temporary common carrier authority must make a prima facie showing that a grant of authority is in the public interest. The shippers who submitted the statements of support must have actually experienced transportation problems. Preference will not support a grant of temporary authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134455, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70239 (August 1986).

Temporary common carrier authority is designed to provide an interim solution to pressing shipper needs and to preserve the positions of the parties pending a full resolution of the facts on the merits. The Commission will not in the proceeding on temporary authority resolve all factual controversies in a parallel application for continuing authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134455, In re Raymond O. Daniel, d/b/a P D Xpress, App. No. P-70239 (August 1986).

### **WAC 480-12-033 (cont.)**

A grant of temporary authority does not estop the Commission from denying a parallel application for continuing authority on any issue that is similar between the two applications. Applications for temporary authority do not resolve issues in an ensuing application for continuing authority. RCW 81.80.170; WAC 480-08-250; WAC 480-12-033. Order M. V. No. 133958, In re James R. Tolin d/b/a Punctual

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Transportation, App. No. P-68274 (April 1986).

The service date of an order granting temporary authority is a matter of public record. The term "date of issuance" in WAC 480-12-033 is sufficiently descriptive that persons can identify the point at which temporary authority becomes effective, and is not impermissively vague. Order M. V. No. 133476, In re Inland Empire Distribution Systems, Inc., App. No. P-69452 (February 1986).

Because of the limited time frame, an oral hearing may not be afforded to review a grant of temporary authority. WAC 480-12-033(2)(a). Order M. V. No. 132508, In re Trimac Transportation Services (Western), Inc., App. No. P-69261 (August 1985).

Factors considered in a grant of temporary authority pending transfer are whether a failure to make the grant of authority would result in the destruction of motor carrier properties, and whether a failure to grant authority would impair the carrier's future ability to serve the public in an adequate and continuous manner.

Protests that do not address the basis for grants of temporary authority pending transfer should be denied. RCW 81.80.170; WAC 480-12-033(2)(a). Order M. V. No. 132508, In re Trimac Transportation Services (Western), Inc., App. No. P-69261 (August 1985).

A prima facie statement of need from a supporting shipper will support a grant of temporary authority. A protestant's assertion of ability to perform the required transportation presents an issue of fact best resolved at a hearing for continuing authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 132267, In re Creamery Transport Co., App. No. P-69400 (July 1985).

A protest to an application for temporary authority that does not clearly demonstrate a flaw in the application or clearly support a contention that the protestant can fulfill all of the supporting shipper's needs, will be denied. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 131753, In re A-N Auction Transport, App. No. P-69172 (April 1985); Order M. V. No. 131734, In re West Coast Auto Transport, Inc., App. No. P-68999 (April 1985).

When shippers indicate a desire for a locally-based carrier but do not demonstrate difficulty in obtaining service from existing carriers, and when existing carriers have demonstrated a readiness, willingness and ability to serve these shippers, the evidence does not provide a basis for granting temporary authority. RCW 81.80.170; WAC 480-12-033(l)(a)(ii). Order M. V. No. 128992, In re Thomas L. Trigg & Denine Hughs d/b/a Sea-Tac Courier, App. No. P-67865 (December 1984).

Temporary authority is granted upon prima facie evidence of immediate and pressing need. A grant of temporary authority is an administrative procedure that is based on the applicant's representations and a limited staff investigation. Allegations by a protestant to temporary authority that challenge the veracity of the applicant's representations raise issues better left for a full hearing. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 130021, In re OMI, Inc., App. No. P-68288 (July 1984).

### **WAC 480-12-033 (cont.)**

The appropriate way to respond to an affidavit of fact, in the context of an application for temporary authority, is to present a counter affidavit; a motion to strike will not lie. WAC 480-12-033(1)(b). Order M. V. No. 128761, In re United Truck Lines, Inc., App. No. P-67323 (December 1983).

A grant of temporary authority is founded on affidavits submitted by the applicant, subject to staff review,

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and upon considerations of the public interest. Assertions that the facts alleged to support the temporary authority are insufficient to provide a basis for a grant of authority present issues best left for a full hearing on continuing authority. RCW 81.80.170; WAC 480-12-033(1)(b). Order M. V. No. 128761, In re United Truck Lines, Inc., App. No. P-67323 (December 1983).

When shippers indicate a desire for a locally-based carrier but do not demonstrate difficulty in obtaining service from existing carriers, and when existing carriers have demonstrated a readiness, willingness and ability to serve these shippers, the evidence does not provide a basis for granting temporary authority. RCW 81.80.170; WAC 480-12-033(1)(a)(ii). Order M. V. No. 128992, In re Thomas L. Trigg & Denine Hughs d/b/a Sea-Tac Courier, App. No. P-67865 (December 1983).

When the investigation of an application for temporary authority reveals that shippers had no difficulty obtaining service of the type requested, the shippers' support is only a preference. Preference will not support a grant of temporary authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 128992, In re Thomas L. Trigg & Denine Hughs d/b/a Sea-Tac Courier, App. No. P-67865 (December 1983).

A supporting shipper's statement of need for more reliable service and specialized equipment may show that a grant of temporary authority is consistent with the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 128983, In re Common Carriers, Inc., App. No. P-67785 (December 1983).

Protests to temporary authority that are based on conflicting claims of dual operations, readiness and ability to conduct operations, and carrier economics, are appropriately resolved at a full hearing upon application for continuing authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 128809, In re Geer Brothers Trucking, Inc., App. No. P-67552 (December 1983).

A shipper's affidavit attesting to frequent problems obtaining continuous service while using common carriers, coupled with a preliminary staff investigation that shows no carrier ready, willing, or able to provide service, provides a basis for a grant of temporary authority. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 128809, In re Geer Brothers Trucking, Inc., App. No. P-67552 (December 1983).

A carrier operating under temporary authority who has had three hearings with opportunities to present arguments in briefs and petitions, but whose application for continuing authority has been denied, is not losing his operating right without due process of law. Temporary authority expires upon final resolution of an application for authority proceeding. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 128067, In re Jon S. Pansie d/b/a Tri-Pan Services, Inc., App. No. P-67552 (December 1983).

**WAC 480-12-033 (cont.)**

Upon denial of continuing authority to a carrier who is providing a needed service under temporary authority, implementation of the denial may be delayed so that shippers have time to make alternative arrangements. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 127558, In re Jon S. Pansie d/b/a Tri-Pan Services, Inc., App. No. P-65704 (May 1983).

When it appears to the Commission that a substantial question of public interest is raised by an objection to a grant of temporary authority, but the pleading is stricken due to procedural requirements, the Commission may on its own motion consider the points brought before it. WAC 480-12-033. Order M. V. No. 127318, In re Amalgamated Services, Inc., App. No. P-66973 (March 1983).

A carrier who started extensive operations, apparently in good faith but without the authority of the Commission, may be granted temporary authority to preserve the positions of the parties pending final resolution of the questions of fitness and necessity in an application for continuing authority. RCW 81.80.070 (entry common carriers: fitness-unauthorized operations); RCW 81.80.170; WAC 480-12-033. Order M. V. No. 127318, In re Amalgamated Services, Inc., App. No. P-66973 (March 1983).

When an administrative investigation reveals that current carriers stand ready and able to perform the transportation of the shipper's commodity, the applicant's unsupported assertion of shipper need for his specialized equipment fails to demonstrate that immediate or urgent need justifies a grant of temporary authority or that the grant is in the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 126531, In re Basin Trucking, Inc., App. No. P-66497 (November 1982).

**--- Petition for Reconsideration -- Temporary Authority**

A petition for reconsideration of an order denying temporary authority will be granted when the service sought appears to be an integral part of the overall operation required by the shipper and partially authorized to the applicant, there is an immediate and urgent need for the requested service, and other carriers are available for only a part of the shipper's required service. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 146016, In re Ram Singh, d/b/a Singh Delivery Service (SDS), App. No. P-76513 (January 1993).

Upon receipt of a petition for reconsideration in a temporary authority proceeding, the Commission conducts a thorough review of the application, the parties' submissions, and the results of the Commission Staff's investigation, similar to the review it conducts upon receipt of a protest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145831, In re Puregro Company, d/b/a Northwest Trucking, App. No. P-76229 (December 1992).

The Commission will grant a petition for reconsideration of an order denying temporary authority when a review of the applicant's submissions and the Commission Staff's investigation reveals a bona fide shipper emergency demonstrating that a grant of temporary authority is in the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 145924, In re Armored Express, Inc., App. No. P-76432 (December 1992).

**WAC 480-12-033 (cont.)**

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A petition for reconsideration of an order denying temporary authority will be granted when a review of the submissions and the staff investigation reveals a bona fide shipper need demonstrating that a grant of temporary authority is in the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 144987, In re Ronald Joseph Maffei, d/b/a Joe-Jon Motor Co., App. No. P-75917 (May 1992).

When a party withdrew its protest to an application for continuing authority and did not timely file a protest to a parallel application for temporary authority, the party lacks standing to file a petition for reconsideration of an order granting temporary authority. WAC 480-12-033. Order M. V. No. 136836, In re Pony Express Courier Corporation, App. No. P-71314 (November 1987).

A petition for reconsideration of an order denying temporary authority will be granted when a review of the staff investigation reveals a bona fide shipper emergency demonstrating that a grant of temporary authority is in the public interest. RCW 81.80.170; WAC 480-12-033. Order M. V. No. 134871, In re Keener's, Inc., d/b/a K & N Meats, App. No. P-70607 (October 1986).

A petition for "recision" of an order denying temporary authority which requests leave to amend the application will be treated as a petition for reconsideration. Former WAC 480-08-250. Order M. V. No. 134647, In re Thunderbird Lubrications, Inc., App. No. P-70485 (September 1986).

The Commission may re-examine initial statements of shipper support upon reconsideration of its order denying temporary authority. RCW 81.80.170; RCW 81.04.165. Order M. V. No. 128992, In re Thomas L. Trigg & Denine Hughs d/b/a Sea-Tac Courier, App. No. P-67865 (December 1983).

### **WAC 480-12-045 Application for authority, docketing--Protests--Hearings.**

#### **Cross references**

< Pleadings--Applications for authority--Protests: See WAC 480-09-420.

See Former WAC 480-08-040, 050

#### **SUBDIVISIONS OF NOTES:**

- General
- Amending Application; Redocketing
- Withdrawal of Application
- Protest; Service; Deficiencies in Form or in Service
- Standing; Scope of Protest
- Penalties/Sanctions for Failure to Appear at Hearing
- Requirement of Live Shipper Witnesses on Protested Application
- Submission of Shipper Statements on Unprotested Portions/Territory

#### **-- General**

A protestant's withdrawal without explanation after presenting its evidence does not affect the Commission's ability to consider evidence of record presented by the party in discussing and resolving the issues in the proceeding. RCW 34.05.461; WAC 480-12-045. Order M. V. No. 146358, In re Steve Karabach, d/b/a Steve Karabach Trucking, App. No. E-76408 (April 1993).

#### **WAC 480-12-045 (cont.)**

After a protested motor carrier application has gone to hearing and an initial order has been entered, an applicant is not entitled to withdraw its application as a matter of right. The Commission ordinarily will



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deny an applicant's request for voluntary dismissal at that stage in the proceedings and will proceed to enter a final order. RCW 34.05.464; WAC 480-12-045; 480-09-780. Order M. V. No. 146406, In re Lilac City Express, Inc., App. No. E-76179 (April 1993).

The law prohibiting the refiling of an application applies to applications of the same type, and not to applications for different services (i.e., temporary/"permanent). RCW 81.80.110; 81.80.170; WAC 480-12-033; 480-12-045. Order M. V. No. 145703, In re Harlan Skavlem, d/b/a E.R.S. Trucking, App. No. P-76155 (October 1992).

The Commission will reject a second application for authority that is filed while another application for the same authority is pending. WAC 480-12-045. Order M. V. No. 144813, In re Interstate Distributor Co., App. No. E-75750 (April 1992).

An application for authority sought in an earlier, still-pending application will be rejected. The second application is a useless action, because it is unnecessary if the prior application is granted, and if the prior application is denied, refiling is not legally permitted for six months following denial. RCW 81.80.110; WAC 480-12-045. Order M. V. No. 143920, In re Expedited Express, Inc., App. No. P-75150 (September 1991).

An initial order may be omitted and a final order entered by the Commission when an initial order has been waived by the applicant and all protests were withdrawn prior to the hearing. RCW 34.05.461; WAC 480-12-045. Order M. V. No. 143580, In re Diane I. Burke, d/b/a M & D Burke Trucking, App. No. E-74672 (July 1991).

The Commission will not accept a second pleading on behalf of a party while another of the same sort is pending on the party's behalf. WAC 480-09-420; 480-12-045. Order M. V. G. No. 1472, In re Sure-Way Incineration, Inc., App. No. GA-868 (February 1991).

The Commission may examine circumstances as they existed on the date of the application. Allowing a carrier that prior to the application showed no interest in the territory sought to effectively block a tenable application would be inconsistent with the public interest. RCW 81.80.070 (contract); WAC 480-12-045(3)(d). Order M. V. No. 139292, In re Oregon Armored Service, Inc., App. No. P-71976 (March 1989).

The Commission is not required by chapter 34.04 RCW, by WAC 480-08-040(4), or by WAC 480-12-045 to hold hearings when no dispute exists regarding the only material fact. Order M. V. No. 138133, In re Metro Hauling, Inc., App. No. E-19614 (August 1988). Related filings: Order M. V. No. 138357, In re Action Express, Inc., App. No. E-19642 (November 1988); Order M. V. No. 138134, In re Great Northern Truck Express, Inc., App. No. E-19633 (August 1988); Order M. V. No. 138132, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (August 1988).

### **WAC 480-12-045 (cont.)**

Ex parte action is not a matter of right after protests to an application have been withdrawn. The Commission may, in its discretion, order a hearing whether or not an application is protested. RCW 81.80.070 (entry common carriers: ex parte); Former WAC 480-08-240(13); WAC 480-12-045. Order M.

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V. No. 136789, In re Roy N. Carlson, Inc., App. No. P-70991 (October 1987).

A party who files a protest to an application for common carrier authority, who does not appear at the hearing and is therefore dismissed, may not file exceptions to a grant of authority. A claim of a lack of notice of hearing will be denied when such a claim is uncorroborated and Commission files show that notice of hearing was mailed. WAC 480-08-080(2); WAC 480-12-045(5). Order M. V. No. 130049, In re Byron A Gusa Jr. d/b/a K & G Construction, App. No. P-67701 (July 1984).

Written statements of shipper support submitted after a hearing on a protested application, without a request for reopening or a showing why reopening is proper, will not be considered. WAC 480-12-045(6). Order M. V. No. 129687, In re Allen Brown d/b/a Allen Brown Woodwaste, App. No. E-18887 (May 1984).

An unprotested application for authority must meet the minimum standard of proof that the public convenience and necessity call for the proposed service. RCW 81.80.070; WAC 480-12-045(6). Order M. V. No. 129315, In re Donald W. Lemmons d/b/a Interstate Wood Products, App. No. E-18789 (April 1984).

A post-hearing written statement of support from a witness who testified under oath at the hearing, which impeaches the witness' testimony, should be rejected. WAC 480-12-045(6). Order M. V. No. 129068, In re John F. Mitchell, App. No. P-67157 (January 1984).

A proceeding may only accomplish what the application seeks. A request to consolidate two permits, not sought in the application, may not be granted. RCW 81.80.070; WAC 480-12-045(2). Order M. V. No. 127839, In re Oak Harbor Freight Lines, Inc. d/b/a Oak Harbor Freight Lines/L. L. Buchanan Company, Inc., d/b/a Buchanan Auto Freight, App. No. P-66516 (August 1983).

### **--- Amending Application; Redocketing**

A proposed amendment to an application for authority is unacceptable when the amendment would produce a vague commodity description or a timing requirement that is not susceptible of enforcement. RCW 80.80.080; RCW 81.80.100; WAC 480-12-045. Order M. V. No. 141737, In re Bullet, Inc., Hearing No. E-19967 (December 1990).

If an applicant seeking authority to haul grape slurry establishes an unmet shipper need for the carriage of grape juice, the application will be corrected and redocketed to request authority to haul grape juice. Absent protest from carriers other than those participating in the original hearing, the application should be granted. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-045. Order M. V. No. 140097, In re T & T Milk Transport, Inc., App. No. E-19755 (September 1989).

### **WAC 480-12-045 (cont.)**

When the nature of the service provided is not consistent with contract carriage, a grant of that authority is not appropriate, notwithstanding the lack of available carriers. Redocketing of the application may be allowed and the applicant may apply for common carrier authority. RCW 81.80.070 (contract); WAC 480-12-045. Order M. V. No. 139493, In re Jim Elsbree, d/b/a J & P Trucking, App. No. P-71880 (May 1989).

A docket that does not reflect the unique and different nature of an application does not give potential

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protestants a reasonable opportunity to contest the application. The Commission may order that the application be re-docketed. WAC 480-12-045. In re Metro Hauling, Inc., App. No. E-19614 (August 1988). Related filings: Order M. V. No. 138357, In re Action Express, Inc., App. No. E-19642 (November 1988); Order M. V. No. 138134, In re Great Northern Truck Express, Inc., App. No. E-19633 (August 1988); Order M. V. No. 138133, ; Order M. V. No. 138132, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (August 1988).

Late exceptions that do not challenge any finding or conclusion of a proposed order but rather seek to amend the original application will be rejected, since they seek changes that would require redocketing and hearing or renegotiation of protestants' withdrawals. Former WAC 480-08-240(6); WAC 480-12-045. Order M. V. No. 138366, In re Ken H. Sublie, d/b/a Sublie's Logging & Equipment Repair, App. No. P-71813 (September 1988).

When applicant has been authorized to redocket its application to seek authority for additional territory proved at hearing to require the proposed service, and no protests are filed to the redocketed application, the application should be granted. WAC 480-12-045(1). Order M. V. No. 136652, In re Larry H. Montgomery, d/b/a Larry H. Montgomery, App. No. E-19343 (September 1987).

An amendment to an application proposing to remove restrictions on the authority docketed is expanding the application and may not be considered without redocketing. WAC 480-12-045(1),(2). Order M. V. No. 129284, In re Blackburn Truck Lines, Inc., App. Nos. E-18631 and E-18821 (February 1984).

A request for authority beyond the docketed commodities cannot be granted without redocketing. RCW 81.80.100; WAC 480-12-045(1)(2). Order M. V. No. 127558. In re Jon S. Pansie d/b/a Tri-Pan Services, App. No. P-65704 (May 1983).

Contract carriage is not a lesser service included within common carriage, but a separate service. Factors determining the two services' consistency with the public interest differ. An application for common carrier authority may not be amended to become an application for contract carrier authority. Redocketing or an entirely new application is required. RCW 81.80.070 (contract: difference from common); WAC 480-12-045(1). Order M. V. No. 126620, In re Steve L. & Lester R. Waggoner d/b/a Waggoner Trucking, App. No. E-18606 (December 1982).

An application for common carrier authority may not be amended to restrict transportation to a contracting shipper. WAC 480-12-045(1),(2). Order M. V. No. 126620, In re Steve R. & Lester R. Waggoner d/b/a Waggoner Trucking, App. No. E-18606 (December 1982).

### **WAC 480-12-045 (cont.)**

#### **-- Withdrawal of Application**

After a protested motor carrier application has gone to hearing and an initial order has been entered, an applicant is not entitled to withdraw its application as a matter of right. The Commission ordinarily will deny an applicant's request for voluntary dismissal at that stage in the proceedings and will proceed to enter a final order. RCW 34.05.464; WAC 480-12-045; 480-09-780. Order M. V. No. 146406, In re Lilac City Express, Inc., App. No. E-76179 (April 1993).

The Commission may order further hearings in a proceeding whenever it is not satisfied that all pertinent

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issues are resolved, even if the protestants have unconditionally withdrawn and the applicant seeks to withdraw the application. WAC 480-12-045; 480-09-400. Order M. V. No. 145740, In re Star Moving & Storage, Inc./United Couriers, App. Nos. P-73707 & P-75799 (October 1992).

The Commission will deny an applicant's request for dismissal of an adjudicative proceeding when it is not satisfied that all pertinent issues are resolved or that the matter is properly dismissed. WAC 480-12-045; 480-09-400. Order M. V. No. 145517, In re Star Moving & Storage, Inc./United Couriers, App. No. P-73707 (September 1992); recon. denied, Order M. V. No. 145627 (September 1992) and Order M. V. No. 145740 (October 1992).

Granting an applicant's request to withdraw his application after entry of a proposed order is discretionary with the Commission. Former RCW 34.04.090; WAC 480-12-045. Order M. V. No. 135801, In re F. Allen Forler d/b/a A. F. Excavating, App. No. P-70777 (April 1987).

### **--- Protest; Service; Deficiencies in Form or in Service**

No degree of liberalism in interpretation will transform a complaint containing no mention of an application into a protest of that application. WAC 480-09-425; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

Allowing intervention after the cutoff for protests from persons who could have protested is inconsistent with WAC 480-12-045 and with the purposes of the rule. WAC 480-09-430; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

A person who could have protested an application but failed to file a timely protest may not participate in any hearing on the application. That means it may not intervene in the proceeding, may not on its own initiative sponsor a witness, and may not provide a witness to a party for the purpose of providing general evidence about its own operations and its own ability to meet shipper needs. A witness associated with the person might be able to testify for a party to the extent necessary to preserve that party's rights to present rebuttal. WAC 480-09-420; 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/ Courier Services, App. No. P-77496 (May 1994).

### **WAC 480-12-045 (cont.)**

The Commission generally will not strike a protest for partial failure of service if it appears that no party was prejudiced and that the failure of service was not intentional. WAC 480-12-045. Order M. V. No. 146106, In re Lyle C. & Larry E. Jones, d/b/a Lyle C. Jones Trucking, App. No. E-75654 (February 1993).

The Commission may disregard a protest that was not properly served on the applicant's attorney of record and may consider the application ex parte. WAC 480-12-045(6). Order M. V. No. 140715, In re H & K Trucking, Inc., d/b/a North Pacific Transport, App. No. P-72756 (January 1990).

When the name and address of an applicant's attorney is published in the weekly docket, any protest to the application must be served upon the attorney; service upon the applicant alone is not sufficient. RCW 34.05.437(3); WAC 480-09-120(2)(a); WAC 480-12-045(3)(a). Order M. V. No. 140715, In re H & K Trucking, Inc., d/b/a North Pacific Transport, App. No. P-72756 (January 1990).

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Protests, like other pleadings, should be liberally construed and amendments liberally permitted. Former WAC 480-08-050(6); WAC 480-12-045. Order M. V. No. 127174, In re Federal Transfer Company, Inc./J & H Trucking, Inc., App. No. P-66301 (February 1983).

A protest that lists the name and common carrier permit number of the protestant and the name and application number to which the protest is addressed, the nature of the conflicting authorities, a signature of the protestant, and is timely presented, is in substantial compliance with the requirements. WAC 480-08-050(6); WAC 480-12-045(3)(e). Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982).

Commission rules governing pleadings require "reasonable compliance". A protest that lists the name and common carrier permit number of the protestant and the name and application number to which the protest is addressed, the nature of the conflicting authorities, a signature of the protestant, and is timely presented, is in substantial compliance with the requirements. WAC 480-12-045(3)(d),(e). Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982).

An amendment to a protest on any terms lawful, just, and not injurious to the interests of third parties not present at the proceedings, may be allowed after all parties had an opportunity to present arguments. RCW 480-12-045. Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982)

A protestant must show that it is ready, willing and able to handle the supporting shippers' needs--including a demonstration of authority, equipment, skill, and desire to fulfill shippers' needs--and that it has actively pursued business in the community of the shipper. RCW 81.80.070 (entry common carriers: protestant-problems with); WAC 480-12-045(3)(e). Order M. V. No. 126429, In re Glenn Mar, Inc., App. No. P-65982 (November 1982).

### **WAC 480-12-045 (cont.)**

#### **--- Standing; Scope of Protest**

The statement of potential amendments in a protest that would satisfy protestant's interests is informational and will not be construed as a limitation on the protest. WAC 480-12-045. Order M. V. No. 147947, In re General Delivery Service, Inc./James J. Brunner, d/b/a All Star Moving Service, App. No. P-76507 (July 1994).

A person who could have protested an application but failed to file a timely protest may not participate in any hearing on the application. That means it may not intervene in the proceeding, may not on its own initiative sponsor a witness, and may not provide a witness to a party for the purpose of providing general evidence about its own operations and its own ability to meet shipper needs. A witness associated with the person might be able to testify for a party to the extent necessary to preserve that party's rights to present rebuttal. WAC 480-12-045. Order M. V. No. 147856, In re Joseph N. D'Amico, d/b/a Security Services/Courier Services, App. No. P-77496 (May 1994).

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When a different carrier succeeds to the applicant's interest during the pendency of the application, the Commission may allow the pending application to be amended and redocketed rather than require the successor to file a new application, when doing so is consistent with the public interest. WAC 480-12-045. Order M. V. G. No. 1657, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (September 1993).

A carrier who was eligible to file a protest but failed to do so may not participate in the hearing as a witness in another protestant's direct examination; it may not do indirectly what it is prohibited from doing directly under WAC 480-12-045(3). Order M. V. No. 146200, In re Lyle C. & Larry E. Jones, d/b/a Lyle C. Jones Trucking, App. No. E-76068 (March 1993).

Temporary authority is not an interest that confers standing to protest an application for "permanent" authority. WAC 480-12-045. Order M. V. No. 145708, In re ENA Couriers (Seattle), Inc., App. No. E-75722 (October 1992).

When an application is protested, and the hearing takes testimony on the full scope of the application, a protestant generally may participate to the full extent of the applicant's direct case. RCW 34.05.449; WAC 480-12-045. Order M. V. No. 145708, In re ENA Couriers (Seattle), Inc., App. No. E-75722 (October 1992).

Carriers who have only conditionally withdrawn their protests remain as parties, and a request for dismissal of the proceeding should be served on them. WAC 480-09-140; WAC 480-09-120; WAC 480-09-410; WAC 480-12-045. Order M. V. No. 145627, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1992).

WAC 480-12-045(3) does not require that each protestant to an application have authority identical to that for which application is made. The only requirement is that the protestant have a valid interest adverse to the application. Order M. V. No. 144656, In re Nippon Express U.S.A., Inc. (NITTSU), App. No. P-74686 (March 1992).

### **WAC 480-12-045 (cont.)**

A person who has filed an application with the Commission, and who has entered a contract to acquire a carrier eligible to protest an application, may file and prosecute a protest. WAC 480-12-045. Order M. V. No. 141006, In re Becker Trucking, Inc., d/b/a Becker Trucking: Becker Express, App. No. E-19787 (March 1990).

Protests to transportation applications may be filed and prosecuted personally by the owner of a permit or, subject to rules regarding representation and qualification, by an agent--such as a manager--on the owner's behalf. WAC 480-12-045(3). Order M. V. No. 141006, In re Becker Trucking, Inc., d/b/a Becker Trucking: Becker Express, App. No. E-19787 (March 1990).

An interest "adverse to [an] application," conferring standing to protest, is any interest that might be adversely affected if the application were granted. WAC 480-12-045(3). Order M. V. No. 141006, In re Becker Trucking, Inc., d/b/a Becker Trucking: Becker Express, App. No. E-19787 (March 1990).

A transferee under temporary authority pending determination of the transfer application has standing to protect that authority through a protest; if the protestant's underlying application for transfer were denied, the authority itself would continue but would merely revert to its prior owner. WAC 480-12-045(3); WAC

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480-12-050. Order M. V. No. 138588, In re Wes-Pac Transportation Co., Inc. d/b/a Wes-Pac, App. No. E-19525 (November 1988).

When a protestant has an interest potentially harmed by a grant of authority, weight restrictions in its permit will not preclude it from challenging the full scope of the applicant's direct case. Former WAC 480-08-040(4); WAC 480-12-045. Order M. V. No. 137248, In re Jobbers Freight Service, Inc., App. No. E-19348 (February 1988).

Filing a valid protest confers party status and accords a protestant the right to contest any issue that may adversely affect its interest. A parcel delivery carrier may participate fully in an application for unrestricted general freight authority. RCW 34.04.090(2); WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 136348, In re Jobbers Freight Service, Inc., App. No. E-19348 (August 1987).

The Commission will not subject a clearly mandatory rule to exceptions that are not supported by an overriding public purpose. WAC 480-12-045(3)(d) will not be waived to allow intervention when the potential intervenor or its predecessor had the opportunity to protest the application. WAC 480-08-330(3). Order M. V. No. 135089, In re E. C. Browne, d/b/a A-N Auction Transport, App. No. P-69188 (December 1986).

Lack of authority at the time of docketing is not a sufficient excuse for failure to file a protest if the authority existed at the time of the docketing or if a proceeding was underway to acquire the authority. The protest rules allow participants in a hearing to know beforehand the identity of other interested parties and the rules facilitate case preparation and the settlement of issues. WAC 480-12-045(3)(d). Order M. V. No. 135089, In re E. C. Browne, d/b/a A-N Auction Transport, App. No. P-69188 (December 1986).

### **WAC 480-12-045 (cont.)**

A city and county with authority over garbage and solid waste, but without authority over recyclables and no stated interest in recyclable commodities, have not shown potential adverse effect supporting their standing to protest an application for authority to transport recyclables. WAC 480-08-040(4); WAC 480-12-045(3)(b). Order M. V. No. 133753, In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

Carriers have an interest potentially adverse to a broker and therefore have standing to protest a brokerage application. WAC 480-12-045(3). Order M. V. No. 132229, In re Norma M. Banaka, App. No. P-68722 (July 1985).

A carrier with authority to transport "recyclable hazardous waste materials" has authority to transport "recyclable...liquid hazardous materials". RCW 81.80.200; WAC 480-12-045(3). Order M. V. No. 130721, In re Crosby & Overton, Inc., App. No. P-66968 (October 1984).

Common carriers may have a valid interest adverse to an application for brokerage authority and therefore have standing to protest such an application. WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 130356, In re Continental Traffic Company, Inc., App. No. P-67117 (September 1984).

If a protestant's witness is authorized to speak for the protestant and makes a statement on the record in a hearing defining the extent of the protest, the Commission and the parties have a right to rely upon the

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representation. WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 129315, In re Donald W. Lemmons d/b/a Interstate Wood Products, App. No. E-18789 (April 1984).

A protestant may only protest an application to the extent of the protestant's authority. WAC 480-08-040(4); WAC 480-12-045(3). Order M. V. No. 128299, In re Larry J. Manke, App. No. P-67088 (September 1983).

### **--- Penalties/Sanctions for Failure to Appear at Hearing**

A penalty assessment will be made against an applicant who fails to appear at a scheduled hearing unless the nonappearance is excused. WAC 480-12-045(4)(e); 480-09-700(3)(c). Order M. V. No. 145921, In re R. W. Henricksen, Inc./Cornerstone Construction, Inc., App. No. P-75387 (December 1992).

The 90-day refiling sanction of WAC 480-12-045(4)(c) is discretionary, and will not be imposed on review when not supported by the record. Order M. V. No. 144061, In re Stotts Construction, Inc., App. No. E-74736 (October 1991); recon. denied, Order M. V. No. 144210 (November 1991).

A penalty assessment will be made against a protestant who fails to appear at a scheduled hearing, when the protestant's failure to appear results in unnecessary appearances by others. RCW 81.04.380; 81.04.405; WAC 480-09-700; 480-12-045(4). Order M. V. No. 143651, In re Eppich Grain, Inc., App. No. E-74760 (July 1991).

### **WAC 480-12-045 (cont.)**

The Commission may not assess a penalty for nonappearance at a hearing unless the nonappearing party is a public service company. RCW 81.04.380; 81.04.387; WAC 480-09-700; 480-12-045(4). Order M. V. No. 143355, In re Marjorie J., Brian L., and Robert E. Bent, d/b/a Bent and Sons, Inc., App. No. P-74294 (May 1991).

A party who files a protest to an application for common carrier authority, who does not appear at the hearing and is therefore dismissed, may not file exceptions to a grant of authority. A claim of a lack of notice of hearing will be denied when such a claim is uncorroborated and Commission files show that notice of hearing was mailed. WAC 480-08-080(2); WAC 480-12-045(5). Order M. V. No. 130049, In re Byron A Gusa Jr. d/b/a K & G Construction, App. No. P-67701 (July 1984).

### **--- Requirement of Live Shipper Witnesses on Protested Application**

Protested portions of an application must be supported by witnesses testifying in person at a hearing; letters of support are not sufficient. RCW 81.80.070 (entry common carriers: burden of proof); WAC 480-12-045(4),(5).

Order M. V. No. 145820, In re Joe Guglielmelli, Jim Lilwall & Rick Spiess, d/b/a Joe Guglielmelli & Associates, App. No. E-75746 (November 1992).

Order M. V. No. 143632, In re C & C Transfer Co., Inc., App. No. E-74249 (July 1991).

When an application for common carrier motor carrier authority is protested, the applicant must establish that the public convenience and necessity require the operations it proposes through the testimony of



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witnesses present at the hearing. WAC 480-12-045. Order M. V. No. 147565, In re Charles Miller Trucking Co., Inc., App. No. E-77396 (March 1994).

The Commission requires shipper testimony to support a contested application for new authority. RCW 81.80.070 (entry common carriers: burden of proof); WAC 480-12-045(4),(5). Order M. V. No. 144104, In re Gerald O. Williams, App. No. P-74878 (October 1991).

The Commission will disregard an applicant's testimony about others' need for its services. Fundamental fairness requires that the shipper appear in the hearing to describe its experiences in person and answer questions about need. RCW 81.80.070 (entry common carriers: burden of proof); WAC 480-12-045(4), (5). Order M. V. No. 143916, In re Safco Safe Transport, Inc., App. No. P-73623 (October 1991).

A protested application must be supported by witnesses appearing in person; letters of support are not sufficient. RCW 81.80.070 (entry common carriers: burden of proof); WAC 480-12-045(4),(5). Order M. V. No. 143534, In re Mystic Transport, Inc., App. No. P-74392 (June 1991).

An application for authority to which a protest is prosecuted can be supported only by testimony from witnesses presented at the hearing, and cannot be supported by written statements filed later. RCW 81.80.070 (entry common carriers: burden of proof); WAC 480-12-045(4),(5). Order M. V. No. 142959, In re Bryan Bradley, d/b/a Bryan J. Bradley & Sons, App. No. P-74174 (March 1991).

### **WAC 480-12-045 (cont.)**

#### **--- Submission of Shipper Statements on Unprotested Portions/Territory**

Written shipper statements may be received in support of unprotected authority. If the shipper support statements are sufficient, a grant of authority will be made. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-045(6).

Order M. V. No. 140879, In re Jim Canaday, d/b/a Canaday Farms, App. No. E-19829 (February 1990).

Order M. V. No. 127482, In re E-L Trucking Company, App. No. E-18720 (April 1983).

When protests are withdrawn, the applicant should be allowed to submit written statements of support as to the unprotected territory. WAC 480-12-045(6).

Order M. V. No. 131238, In re Elmer Cook Trucking, Inc., App. No. E-19000 (January 1985).

Order M. V. No. 129068, In re John F. Mitchell, App. No. P-67157 (January 1984).

Order M. V. No. 127848, In re Lester G. Godfrey d/b/a Godfrey Trucking, App. No. P-66928 (June 1983).

Absent a legally sufficient or credible reason, shipper support statements filed nearly three months after the deadline set by an Administrative Law Judge will be rejected. WAC 480-12-045(6). Order M. V. No. 139291, In re Larry Trapp Trucking, Inc., App. No. E-19700 (March 1989).

The purpose of the requirement for shipper acknowledgements is to assure that the documents are submitted by the persons who claim to have submitted them and to provide assurance of the accuracy of the information contained therein; defects in a shipper acknowledgement are insufficient to require a reversal of

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an order. WAC 480-12-045(6). Order M. V. No. 138382, In re Ell Transport, Inc., App. No. P-71986 (October 1988).

Unprotested matters are subject to hearing and review. Ex parte action at applicant's request is not appropriate when it would avoid review of a proposed order that finds an applicant unfit to provide service. RCW 81.80.070 (entry common carriers: ex parte; fitness); Former WAC 480-08-240(13). Order M. V. No. 136789, In re Roy N. Carlson, Inc., App. No. P-70991 (October 1987).

When an application is unopposed, the applicant must be afforded an opportunity to submit written statements of shipper support demonstrating public convenience and necessity. RCW 81.80.070 (entry common carriers: ex parte). Order M. V. No. 136719, In re Arnold Finkbonner & Sons, Inc., App. No. E-19414 (October 1987).

Shipper support statements that were sent six week late, do not provide a basis for reconsideration of a final order denying the carrier authority for failure to pursue the application. RCW 34.04.120; WAC 480-08-250; WAC 480-12-045(6). Order M. V. No. 131853, In re Harold E. LeMay d/b/a Lucky Towing, App. No. P-68267 (May 1985).

### **WAC 480-12-045 (cont.)**

An unprotested portion of an application must be pursued within reasonable times established by the Commission. Reconsideration of an order denying an application will be denied when the applicant failed to submit the required documents until more than six weeks after the close of an extended filing period and more than four months after the close of the original filing period. Former RCW 81.04.165; Former WAC 480-08-250; WAC 480-12-045(6). Order M. V. No. 131853, In re Harold E. Lemay, d/b/a Lucky Towing, App. No. P-68267 (May 1985).

Written statements of shipper support submitted after a hearing on a protested application, without a request for reopening or a showing why reopening is proper, will not be considered. WAC 480-12-045(6). Order M. V. No. 129687, In re Allen Brown d/b/a Allen Brown Woodwaste, App. No. E-18887 (May 1984).

When an applicant is given leave to demonstrate public convenience and necessity through written statements of support, and sufficient statements of support are presented, the Commission may grant authority. RCW 81.80.070; WAC 480-08-240(1)(d); WAC 480-12-045(6). Order M. V. No. 129687, In re Allen Brown d/b/a Allen Brown Woodwaste, App. No. E-18887 (May 1984).

An unprotested application for authority must meet the minimum standard of proof that the public convenience and necessity call for the proposed service. RCW 81.80.070; WAC 480-12-045(6). Order M. V. No. 129315, In re Donald W. Lemmons d/b/a Interstate Wood Products, App. No. E-18789 (April 1984).

The Commission will not consider an applicant's post-hearing written shipper statements of support that are inconsistent with the same shipper's hearing testimony. WAC 480-12-045. Order M. V. No. 129315, In re Donald W. Lemmons d/b/a Interstate Wood Products, App. No. E-18789 (April 1984).

It is the Commission's practice in unprotested matters to afford carriers at least one opportunity to supplement the hearing record with written shipper support. WAC 480-12-045(6). Order M. V. No.

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129284, In re Blackburn Truck Lines, Inc., App. Nos. E-18631; E-18821 (February 1984).

A post-hearing statement of support that demonstrates a need for another carrier may be considered when a grant is adverse to no other party. RCW 81.80.070 (entry common carriers: need for service); WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 129068. In re John F. Mitchell, App. No. P-67157 (January 1984).

A written statement that a shipper has logs to ship from various portions of the state, which does not specify which counties or state a need for additional carriers, is insufficient to support an application. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-045(6). Order M. V. No. 128671, In re Larry G. Gladsjo d/b/a L. G. Logging, App. No. P-67126 (October 1983).

An applicant who fails to file written statements of shipper support when given leave to do so, does not support the application; the Commission will not grant the authority. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-045(6). Order M. V. No. 127915, In re Robert C. Wolford d/b/a Bobby Wolford Trucking and Salvage, App. No. E-18683 (July 1983).

### **WAC 480-12-045 (cont.)**

When a hearing has been held and a proposed order has been entered, but prior to the entry of a final order the applicant submits a request to reopen the record to receive evidence of need as to the unprotected portions of the applications, the Commission will grant the request when no prior opportunity was given to present shipper support statements. WAC 480-12-045(6). Order M. V. No. 127491, In re Thomas M. Stevenson d/b/a Thomas M. Stevenson Trucking, App. No. E-18728 (April 1983).

When an amendment to an application results in a portion being unprotected, but no provision is made for the submission of a verified shipper support statement, the ALJ does not abuse discretion in refusing to consider a statement submitted after the hearing. WAC 480-08-190(1); WAC 480-12-045(6). Order M. V. No. 126084, In re Tacoma Hauling Co., Inc., App. No. E-18498 (August 1982).

### **WAC 480-12-050 Transfer of permit rights.**

#### **Cross References**

- < Form and contents of permit: See RCW 81.80.100.
- < See also RCW 81.80.270.

#### **SUBDIVISIONS OF NOTES:**

- General
- Transferee's Fitness, Willingness, and Ability
- Transferor's Readiness, Ability, and Holding Out;
- Effect on Transferability of Limited Holding Out
- Test Period; Unusual Circumstances Allowing Use of
- Nonstandard Test Period; Transferee's Acquisition of Effective Control Requiring Use of Nonstandard Test Period
- Cessation of Operations During Test Period
- Trafficking in Permits
- Multiple Expressions of Same Authority Merge; Prohibition Against Creation of Duplicative Rights; Other Improper Division of Permit Rights

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### -- General

The proper tests for approval of a transfer application are the fitness of the transferee and whether the transferor was ready, willing and able during the test period to conduct operations under the permit and so held itself out to the public. The issue of need for additional carriage is not directly relevant to a transfer application. RCW 81.80.270; WAC 480-12-050.

Order M. V. No. 148366, In re Daniel C. Lawson, d/b/a Lawson Trucking/Schneider Trucking, Inc., App. No. P-77823 (December 1994).

Order M. V. No. 134831, In re Gary Lavelle, d/b/a Lavelle Trucking/Dave Bekkevar, d/b/a Dave Bekkevar Logging & Trucking, App. No. P-70140 (October 1986).

### WAC 480-12-050 (cont.)

A common carrier permit, once issued and while being exercised, is a property right, and may not be taken from a permit holder without the fairly clear indication that there was an intention to abandon the permit or a part of it. RCW 81.80.270; WAC 480-12-050.

Order M. V. No. 143760, In re Mercer Trucking Co., Inc./ Zeph H. Robinson, d/b/a Robinson Excavating & Trucking, App. No. P-74033 (August 1991).

Order M. V. No. 132877, In re Paffile Truck Lines Inc./Service Truck Lines, Inc.; Paffile Truck Lines, Inc./Oak Harbor Freight Lines, Inc., App. Nos. P-68392; P-68434 (December 1985).  
Lee and Eastes v. Public Service Commission, 52 Wn.2d 701, 328 P.2d 700 (1958).

A carrier must have acquired continuing or permanent authority and have exercised that authority by holding itself out to conduct operations, before its permit becomes a transferable property right. RCW 81.80.270; WAC 480-12-050.

Order M. V. No. 143329, In re Rambler Cincon, Inc./Rambler Trucking, Inc., App. No. P-73907 (May 1991); recon. denied, Order M. V. No. 143692 (July 1991).

Order M. V. No. 135296, In re Evergreen Western Express Service, Inc. d/b/a W.E.S./ Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-70205 (January 1987).

The parties to a proposed transfer of authority are not entitled to a transfer without a hearing as a matter of right merely because the application is not protested. The Commission has discretion to order and conduct a hearing on all applications for transfer of permit rights regardless of whether the application is protested, except in those cases set out in RCW 81.80.270. RCW 81.80.270; WAC 480-12-050; Former WAC 480-08-040(4).

Order M. V. No. 143581, In re Fiorito Bros., Inc./Northwest Construction, Inc., App. No. P-74601 (July 1991).

Order M. V. No. 126852, In re Delta Trucking Co., Inc./Thorndike Trucking, Inc., App. No. P-66283 (December 1982).

Transfer of authority acquired by the transferor during a period of unlawful control will not be approved. WAC 480-12-050.

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Order M. V. No. 131709, In re A & B Trucking, Inc./Evergreen Western Express Service, Inc. d/b/a Western Express Service, Inc./Randolph Miller, App. No. P-67267 (May 1985).

Order M. V. No. 128696, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1983).

### **WAC 480-12-050 (cont.)**

Authority to transport "general freight" or "general commodities" acquired before May 1, 1944, allows any kind of motor freight transportation, including transportation requiring specialized service or specialized equipment. WAC 480-12-050; 480-12-990.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991); recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. denied, Order M. V. No. 143256 (May 1991); vacated and remanded on other grounds, Order M. V. No. 143870 (September 1991).

A carrier that possesses pre-1944 general freight authority may transfer only that portion of the authority it has pursued and exercised. RCW 81.80.270; WAC 480-12-050.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991), recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 143870, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating Order M. V. No. 142724 (February 1991).

In a transfer proceeding, pre-1944 general freight authority is treated as a collection of authorities under a common name, rather than as a unified authority. WAC 480-12-050; 480-12-990.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991), recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 143870, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating Order M. V. No. 142724 (February 1991).

A carrier need not elect, at the time of transportation, under which of alternative expressions of authority contained in its permit it conducts operations. A permit constitutes a single authority, irrespective of the number of times or ways in which particular elements are expressed in the permit language. The separate expressions merge, and are a single authority. RCW 81.80.100; 81.80.270; WAC 480-12-050(5).

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Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991), recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. denied, Order M. V. No. 143256 (May 1991); vacated and remanded on other grounds, Order M. V. No. 143870 (September 1991).

### **WAC 480-12-050 (cont.)**

When the ICC preemptively transfers a portion of an intrastate permit, the WUTC retains authority to reissue the transferor's permit and to delete all authority that has been transferred. RCW 81.80.130; 81.80.270; WAC 480-12-050. Order M. V. No. 147040, In re Star Moving & Storage, Inc./United Couriers, Inc., App. Nos. P-73707 & P-75799 (September 1993).

The Commission may impose restrictive amendments on authority that has been preemptively transferred by the Interstate Commerce Commission when the transferee requests the action and when doing so is consistent with the public interest. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 147040, In re Star Moving & Storage, Inc./United Couriers, Inc., App. Nos. P-73707 & P-75799 (September 1993).

When the Interstate Commerce Commission has asserted jurisdiction and has ordered that certain authority be transferred, the Commission is required by federal law to authorize the transfer. RCW 81.80.130; 81.80.370; 81.80.270; WAC 480-12-050. Order M. V. No. 145580, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1992).

The Commission's transfer regulations do not address the circumstance of additional authority granted to the transferor after the filing of the transfer application. In an appropriate case, the Commission may permit the transfer of a subsequently-acquired extension of authority. WAC 480-12-050. Order M. V. No. 145330, In re Great Northern Enterprises, Inc./Max G. Swick, App. No. P-75038 (July 1992).

All claims for loss or damage against a transferor must be settled before transfer can be authorized, including claims that relate to portions of the permit that the transferor would retain. WAC 480-12-050(5).

Order M. V. No. 144849, In re Terry & Mary Burton, d/b/a All 48 Truck Lines/Bart B. Smith d/b/a B. Smith & Sons, App. No. P-75232 (May 1992).

Recitation of general conclusory language is not sufficient to demonstrate circumstances under which a grant of temporary authority should be authorized when transferor admits that it has no equipment to perform the service and no service has been provided under the transferor's authority. WAC 480-12-050. Order M. V. No. 138812, In re Equipment Specialized Transport, Inc., App. No. P-72445 (December 1988).

A transferee operating under temporary authority pending determination of the transfer application has standing to protect that authority through a protest; if the protestant's underlying application for transfer were denied, the authority itself would continue but would merely revert to its prior owner. WAC 480-12-045(3); WAC 480-12-050. Order M. V. No. 138588, In re Wes-Pac Transportation Co., Inc. d/b/a Wes-Pac, App. No. E-19525 (November 1988).

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Orders authorizing transfer do not require consummation of the transaction and the applicant may choose, when authorization is granted by order, not to complete the transfer. WAC 480-12-050. Order M. V. No. 138473, In re Peterson Bros. Trucking Co./Albert P. Ulrich, App. No. P-72000 (October 1988).

### **WAC 480-12-050 (cont.)**

The withdrawal by Commission staff of its opposition to a transfer of common carrier authority is significant but is not controlling. When it is combined with a finding on which the proposed order was based that incorrectly reflected applicant's activity during the test year as \$30 instead of \$3,000, reversal of the proposed order of denial is proper. WAC 480-12-050. Order M. V. No. 135693, In re Earl R. Curry d/b/a Empire Construction, App. No. P-70598 (March 1987).

When each of two parties claims possession of the right to transfer a single permit and each party actively pursues an application for transfer of that permit, the applications should be consolidated for hearing upon a single record and the issues determined in a single order. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 135298, In re Builders Distributors Sand & Gravel, Inc. d/b/a S & S Truck Lines/Statewide Sales, Inc., d/b/a Builders Aggregate Supply, et al., App. Nos. 70730, 70822 (January 1987).

The Commission may condition approval of a transfer upon the deletion of authority that the transferee does not propose to use. RCW 81.80.200; WAC 480-12-050(5). Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

Absent a strong showing of public interest, partial withdrawal of a transfer application after the entry of a proposed order should be denied. WAC 480-12-050. Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

When a permit holder sold a permit and abandoned all interest in it, and the buyer never obtained lawful control of the permit authority, there are no property rights in the permit and a subsequent sale of the permit to a third party may be disallowed. RCW 81.80.050; RCW 81.80.270; WAC 480-12-050(4)(c). Order M. V. No. 132660, In re K & K, Inc./M & G, Inc., App. No. P-68092 (October 1985); Order M. V. No. 132661, In re Dalbec, Inc./Fifty-Seven, Inc., App. No. P-68093 (October 1985).

Upon the transfer of a permit containing a restriction upon the authority, the restriction will remain within the permit although it was added during a period of unlawful control. WAC 480-12-050(5). Order M. V. No. 131709, In re A & B Trucking, Inc./Evergreen Western Express Service, Inc. d/b/a Western Express Service, Inc./Randolph Miller, App. No. P-67267 (May 1985).

Transfer of authorities requires consideration of practical aspects of operations. The Commission will not unreasonably restrict the alienation of authorities. WAC 480-12-050. Order M. V. No. 128909, In re Herrett Trucking Co., Inc./3-W Trucking, Inc., App. No. P-64846 (December 1983).

When an understanding regarding C.O.D. collection has not been achieved, the Commission may consolidate a complaint regarding the collection with a transfer application. RCW 81.80.270; RCW 81.80.272. Order M. V. No. 128672, In re Paffile Truck Lines, Inc./Donald P. Paffile d/b/a Paffile Truck Lines; Kirby Company v. Paffile Truck Lines, Inc., App. No. P-67324 (November 1983).

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### **WAC 480-12-050 (cont.)**

The Commission may deny an ex parte transfer application if there is an outstanding C.O.D. claim against the transferor. RCW 81.80.270; RCW 81.80.272(2); WAC 480-12-050(2). Order M. V. No. 128672, In re Paffile Truck Lines, Inc./Donald P. Paffile d/b/a Paffile Truck Lines; Kirby Company v. Paffile Truck Lines, Inc., App. No. P-67324 (November 1983).

The Commission may require a hearing in an unprotested transfer proceeding when it learns of an outstanding C.O.D. claim against the transferor. RCW 81.80.270; RCW 81.80.272; WAC 480-12-050(2). Order M. V. No. 128672, In re Paffile Truck Lines, Inc./Donald P. Paffile d/b/a Paffile Truck Lines; Kirby Company v. Paffile Truck Lines, Inc., App. No. P-67324 (November 1983).

The requirements of equitable estoppel are not met solely by facts that indicate that a person operated a carrier for 19 years without Commission authorization or interference. Estoppel; RCW 81.80.050; WAC 480-12-050(4)(a). Order M. V. No. 128063, In re Paul & Randal Savage/Golden Grain Trucking Co., App. No. P-66336 (August 1983).

One who enters a contract to acquire permit authority upon the death of the current holder, who at the time of entering the contract acquires 49 percent of the carrier's stock, acquires control of the permit by purchase, not by devise. RCW 81.80.270; WAC 480-12-050(2). Order M. V. No. 128063, In re Paul & Randal Savage/Golden Grain Trucking Co., App. No. P-66336 (August 1983).

A bankrupt permit holder who has paid penalty assessments for failure to maintain insurance, but has not obtained new insurance, may transfer a permit conditioned on the transferee obtaining insurance. WAC 480-12-050(4)(a). Order M. V. No. 127369, In re Exley Express, Inc./Market Transport, LTD., App. No. P-66624 (April 1983).

Authority limited to "transportation of dry commodities in bulk in specialized equipment", would be eliminated entirely by an amendment excluding "specialized equipment" upon transfer of the permit. RCW 81.80.100; RCW 81.80.270. Order M. V. No. 126857, In re Michael, Patrick, and William Devries/Jim's Transfer, Inc., App. No. P-66231 (January 1983).

### **--- Transferee's Fitness, Willingness, and Ability**

A large number of violations, the continuation of serious violations, and a lack of reasonable assurance of future compliance with Commission rules and laws support finding an applicant not fit to receive authority by transfer. WAC 480-12-050(3). Order M. V. No. 142988, In re DeKubber Bros. Hay Co., Inc./Martin's Feed, Inc., App. No. P-73801 (March 1991).

In a transfer application, failure of the applicant to reveal its ownership fully bears upon the issue of fitness to conduct operations, since possession of authority by an affiliated carrier is grounds for a denial of the application. WAC 480-12-050(5). Order M. V. No. 137754, Laron House, d/b/a Larry House Trucking/McDougal Forest Products, Inc., App. No. P-71302 (May 1988).

### **WAC 480-12-050 (cont.)**



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When the presiding officer finds an applicant's assurance of future compliance credible, and the evidence of an operation in violation of Commission law and rules shows no aggravating circumstance, the Commission will affirm a finding of fitness. WAC 480-12-050(3). Order M. V. No. 136857, In re Dale E. Dobson/Gladys Heinrich, d/b/a Flying "H" Express, App. No. P-70879 (November 1987).

Possible future changes in a transferee's business form or possible future transfer of the permit to a corporation that the transferee would continue to control do not reflect upon the transferee's fitness to conduct operations and do not constitute trafficking in permits. WAC 480-12-050(4)(e). Order M. V. No. 136547, In re Sure, Inc./Linda Hawley, d/b/a North End Taxi, App. No. P-70648 (September 1987).

An applicant has an affirmative burden to demonstrate its fitness to conduct operations. When an applicant has acquired control of a permit without authorization, has operated the permit illegally, and has used a forged document as a basic part of its case before the Commission, the application may be denied for lack of fitness to conduct common carrier operations. RCW 81.80.270, WAC 480-12-050(4). Order M. V. No. 135392, In re Delta Trucking Co., Inc., App. No. P-66283 (February 1987).

A transferee who purports to acquire a permit without Commission approval operates unlawfully. It is unlawful to operate without a permit and it is unlawful to transfer a permit without Commission approval. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 126465, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (October 1982).

### **--- Transferor's Readiness, Ability, and Holding Out; Effect on Transferability of Limited Holding Out**

When there is no competent evidence of activity or holding out during the proper test period, the permit authority is not subject to transfer. RCW 81.80.270, WAC 480-12-050(4).

Order M. V. No. 135392, In re Delta Trucking Co., Inc., App. No. P-66283 (February 1987).  
Order M. V. No. 126465, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1982).

A carrier that possesses pre-1944 general freight authority may transfer only that portion of the authority it has pursued and exercised. RCW 81.80.270; WAC 480-12-050.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991), recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 143870, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating Order M. V. No. 142724 (February 1991).

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### **WAC 480-12-050 (cont.)**

The Commission will deny a transfer application if the transferor fails to demonstrate that it was ready, willing and able to conduct permit operations and so held itself out during the appropriate test period. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 148366, In re Daniel C. Lawson, d/b/a Lawson Trucking/Schneider Trucking, Inc., App. No. P-77823 (December 1994).

In determining whether there has been activity or other holding out under a permit sufficient to support transfer, the Commission will consider only evidence relating to lawful operations. WAC 480-12-050. Order M. V. No. 147379, In re Broadway Transportation, Inc./Mahmood R. Firoozi, d/b/a Broadway Cab, App. No. P-76739 (January 1994).

Advertising and solicitation are indicators of a permit holder's holding out to the public, and may support a transfer if they represent a realistic effort to obtain traffic under the authority. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 147326, In re Olsen's Land Development, Inc./ Morrison Gravel, Inc., App. No. P-76753 (December 1993).

A carrier need not operate in all of its territory in order to demonstrate its exercise of its entire authority if it is operating consistent with its resources and has not evidenced an intention not to provide service in a portion of its territory. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 147326, In re Olsen's Land Development, Inc./ Morrison Gravel, Inc., App. No. P-76753 (December 1993).

In deciding whether a transferor has held itself out to conduct business under its permit, the Commission asks whether the transferor demonstrated that it took steps to secure traffic that a reasonable carrier in the transferor's position would take if it earnestly desired the traffic. RCW 81.80.270; WAC 480-12-050(4). Order M. V. No. 145602, In re Econexpress, Inc./ United Motor Freight, Inc., App. No. P-75366 (October 1992).

Activity in one specialized area of transportation fails to show holding out to transport a wide range of other traffic. RCW 81.80.270; WAC 480-12-050(4). Order M. V. No. 145602, In re Econexpress, Inc./ United Motor Freight, Inc., App. No. P-75366 (October 1992).

Limited solicitation efforts by a carrier with considerable resources to secure widely available traffic, resulting in the tender of traffic that is rejected, fails to demonstrate holding out for the conduct of business. RCW 81.80.270; WAC 480-12-050(4). Order M. V. No. 145602, In re Econexpress, Inc./ United Motor Freight, Inc., App. No. P-75366 (October 1992).

When a carrier possesses the personnel, the skill, the financial resources, and the equipment to pursue realistically and to secure intrastate traffic if it desires the traffic, but has failed to do so, the failure provides objective evidence of an intention not to use (i.e., to abandon) its unused authority. RCW 81.80.270; WAC 480-12-050(4). Order M. V. No. 145602, In re Econexpress, Inc./ United Motor Freight, Inc., App. No. P-75366 (October 1992).

### **WAC 480-12-050 (cont.)**

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The Commission may partially deny transfer of statewide authority when the permit holder has made a conscious decision not to exercise, or to abandon, statewide service and to limit its activities to parts of the state. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 144849, In re Terry & Mary Burton, d/b/a All 48 Truck Lines/Bart B. Smith d/b/a B. Smith & Sons, App. No. P-75232 (May 1992).

Subjective intent not to abandon a permit, in the absence of credible objective evidence of readiness, ability, willingness and holding out, ordinarily will not support a transfer. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 144597, In re R.C. Kercheval, Inc./Katmai Transport, Inc., App. No. P-74415 (February 1992); recon. denied, Order M. V. No. 144753 (April 1992).

In a transfer proceeding, a permit holder who claims that relevant freight movements occurred during the test period must produce bills of lading or other records of freight movements, if available, or demonstrate that the alternative evidence offered is the best available evidence of freight movements. WAC 480-12-050. Order M. V. No. 144597, In re R.C. Kercheval, Inc./Katmai Transport, Inc., App. No. P-74415 (February 1992).

In a transfer proceeding, a permit holder does not prove holding out when the only evidence it produces is a claim of activity that is not supported by records of freight movements, and a self-serving statement that it did not turn away any freight. WAC 480-12-050. In re Order M. V. No. 144282, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (December 1991).

In a transfer proceeding, the Commission will examine the nature of a carrier's holding out, and may confine the approved transfer to the extent of the holding out. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 143870, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating Order M. V. No. 142724 (February 1991).

A transferor's readiness, willingness and ability, and holding out to handle the traffic in question, are measured by the objective circumstances in which the permit holder finds itself. WAC 480-12-050. Order M. V. No. 143760, In re Mercer Trucking Co., Inc./ Zeph H. Robinson, d/b/a Robinson Excavating & Trucking, App. No. P-74033 (August 1991).

Activity by a previous permit holder is irrelevant to whether the transferor has acquired a property right in its permit. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 143692, In re Rambler Cincon, Inc./Rambler Trucking, Inc., App. No. P-73907 (July 1991).

Newspaper advertisements, solicitation, and credible testimony by a witness may be sufficient to demonstrate holding out to the public for purposes of a transfer, even when there is no evidence of actual activity under the permit. WAC 480-12-050. Order M. V. No. 143154, In re Richard A. Carroll, d/b/a Davis Creek Rock/ Joel Olson Trucking, Inc., App. No. P-73937 (April 1991).

### **WAC 480-12-050 (cont.)**

Credible evidence that a transferor held itself out to conduct operations during the test period is a prerequisite to the transfer of common carrier authority. A prima facie showing includes advertising and solicitation reasonably designed to gain relevant business, and evidence that the transferor hauled more than

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a minimal number of shipments. WAC 480-12-050. Order M. V. No. 141616, Raven Transfer & Storage Co./ Northwest Facilities Management Systems, Inc., App. No. P-73304 (July 1990).

A witness may sponsor business records into evidence without direct knowledge of every aspect of their contents. A foundation for admission of business records is provided if the witness can provide first-hand knowledge of the company's business practices and verify that the exhibits are from its regularly maintained business records. RCW 34.04.100; WAC 480-08-190; WAC 480-12-050. Order M. V. No. 139442, In re Materials & Transport, Inc./Ajax, Inc., App. No. P-72230 (May 1989).

All relevant evidence is admissible that in the opinion of the presiding officer is the best evidence reasonably obtainable. Billing invoices may be relevant evidence of activity under a permit in a transfer proceeding. WAC 480-08-190; WAC 480-12-050(4)(b). Order M. V. No. 139442, In re Materials & Transport, Inc./Ajax, Inc., App. No. P-72230 (May 1989).

Telephone directory advertisements, documentary evidence of hauls and credible testimony by a witness are evidence of holding out to the public for purposes of transfer. WAC 480-12-050(4)(a). Order M. V. No. 139442, In re Materials & Transport, Inc./Ajax, Inc., App. No. P-72230 (May 1989).

Evidence of interstate activity or that industrial insurance premiums were paid upon trucking wages during an appropriate test period is not sufficient to demonstrate activity pursuant to an intrastate common carrier permit. WAC 480-12-050. Order M. V. No. 138749, Mumma Trucking Co., Inc., v. Delta Trucking Co., Inc., Cause No. TV-1706 (December 1988).

In a transfer application, a representative sample of 47 shipments under the permit, a telephone directory advertisement and credible testimony from the transferor's witness is sufficient evidence of activity and holding out, even though the activity is for only one shipper. WAC 480-12-050. Order M. V. No. 137956, In re Seattle Freight Service, Inc./Rental Marts, Inc., App. No. P-71527 (September 1988).

In an application for transfer of statewide common carrier authority, an applicant need not show activity in every portion of the state, but must demonstrate willingness and ability to perform service within the territory to the extent of its resources. WAC 480-12-050(4). Order M. V. No. 137755, In re Courtesy Moving & Storage, Inc./Big Red, Inc., App. No. P-71320 (May 1988).

When a carrier did not advertise in the local cartage cities for which it seeks to transfer authority, performed no service there and admits that it would have rejected requests for local cartage service in those cities, it was not ready, willing or able to provide local cartage service in the challenged territories. WAC 480-12-050(4). Order M. V. No. 137755, In re Courtesy Moving & Storage, Inc./Big Red, Inc., App. No. P-71320 (May 1988).

### **WAC 480-12-050 (cont.)**

When a transferor of common carrier authority presents a credible prima facie case that it held itself out for the conduct of common carrier operations by advertising and soliciting for business and that it conducted more than a minimal number of intrastate shipments during the test period, and the evidence is neither discredited upon cross-examination nor rebutted, the carrier has established holding out sufficient to support a transfer of authority. WAC 480-12-050(4). Order M. V. No. 137178, In re Tim's Transfer, Inc./Steven D. Simon, App. No. P-71108 (February 1988).

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For purposes of determining activity in a transfer proceeding, the Commission will consider as intrastate traffic the shipment of goods to an ultimate consumer within the state at the direction of an intrastate retail seller from the carrier's facility, when the goods arrived at the facility in interstate commerce and came to rest subject to the disposition of the retail seller. WAC 480-12-050(4). Order M. V. No. 137178, In re Tim's Transfer, Inc./Steven D. Simon, App. No. P-71108 (February 1988).

When a transferor shows four uncontested bills of lading demonstrating activity in the test period, its inability to match other shipments listed on an exhibit with bills of lading does not show that the transferor abandoned its authority. WAC 480-12-050(4)(b). Order M. V. No. 136857, In re Dale E. Dobson/Gladys Heinrich, d/b/a Flying "H" Express, App. No. P-70879 (November 1987).

A lack of commercial advertising efforts does not necessarily show that a transferor failed to hold itself out to provide common carrier service. Personal solicitation will constitute reasonable holding out when it is appropriate to the industry served. WAC 480-12-050. Order M. V. No. 136857, In re Dale E. Dobson/Gladys Heinrich, d/b/a Flying "H" Express, App. No. P-70879 (November 1987).

Evidence of activity under a permit subject to partial transfer, although not segregated by portions of the authority sought for transfer, will not be rejected when the exhibit is understandable in its present form and there is no discernable prejudice resulting from the failure to segregate the shipments. RCW 34.04.100; WAC 480-12-050(4); WAC 480-08-190. Order M. V. No. 136758, In re Bremerton Transfer & Storage Co., Ltd., d/b/a Olympic Freight Lines/Security Parcel Express, Inc., App. No. P-70737 (October 1987).

Although actual activity is highly relevant to the question of whether a transferor was ready, willing and able to accept business and whether it held itself out as a common carrier, the absence of activity is not irrefutable proof of abandonment of authority. WAC 480-12-050. Order M. V. No. 136690, In re West Coast Truck Lines, Inc./Dave Williams Logging, Inc., App. No. P-70682 (October 1987).

Loss of a carrier's de jure corporate status does not affect the validity of its common carrier permit, when the carrier's principal continued its operations and operated openly as a de facto corporation. WAC 480-12-050(4)(a). Order M. V. No. 136547, In re Sure, Inc./Linda Hawley, d/b/a North End Taxi, App. No. P-70648 (September 1987).

When a transferor performed motor transport service in only one minor instance and did not hold itself out to the public as a carrier during the test year, transfer may properly be denied. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 135494, In re Earl R. Curry d/b/a Empire Construction/Peter D. and Mark Kelly, d/b/a Kelly Dozing & Aggregate, App. No. P-70598 (March 1987).

### **WAC 480-12-050 (cont.)**

The question of whether a carrier is a for-hire common carrier depends not on the identity of the shipper but on the question of whether the carrier held itself out to the public as a common carrier. When there is credible testimony of holding out, combined with evidence of telephone directory advertising, a finding that a transferor held itself out as a common carrier will be upheld. RCW 81.81.270; WAC 480-12-050(3). Order M. V. No. 134486, Valley Transport, Inc./LTI, Inc., d/b/a Milky Way, App. No. P-69759 (August 1986).

A carrier whose permit authorizes both general freight, local cartage in the city of Seattle, and household goods authority statewide, who undertook only household goods transportation in the test year and

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undertook only to advertise its household goods services, has not maintained its general freight authority. RCW 81.80.270; WAC 480-12-050(4)(e). Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

A carrier is authorized to supply to the record a sample of shipments; it is charged with seeing that the sample is representative. Commission deletion of authority for which no evidence of activity or holding out was presented will be sustained against an applicant's contention that sample shipments offered at the hearing were not representative of the services actually performed. WAC 480-12-050(4)(b). Order M. V. No. 133160, In re Paul F. and Nancy S. Kimball/Allison-Mitchell Transfer, App. No. P-69103 (February 1986).

Although actual activity is highly relevant to the question of whether the transferor was ready, willing and able to accept business and held itself out to the public as a common carrier, it is not irrefutable proof of holding out as a common carrier and its absence is not irrefutable proof of abandonment of authority. WAC 480-12-050(4). Order M. V. No. 133160, In re Paul F. and Nancy S. Kimball/Allison-Mitchell Transfer, App. No. P-69103 (February 1986).

The requirement that a permit holder show invoices of activity during the appropriate test period aids in the inquiry into holding out but is not an end in itself. When credible evidence exists that a carrier held itself out to the public to do business, transfer may be authorized. RCW 81.80.270; WAC 480-12-050(4)(b). Order M. V. No. 133106, In re E. B. P., Inc. d/b/a Valley Moving and Storage/Larry L. Biggs d/b/a Valley Moving and Storage of Spokane, App. No. P-68909 (January 1986).

A showing that a carrier held itself out to the public may be made by proof of advertising reasonably directed to the shippers served. In the case of a carrier of household goods, telephone directory advertising combined with other evidence of activity may support a transfer application. WAC 480-12-050(4)(a). Order M. V. No. 133106, In re E.B.P., Inc. d/b/a Valley Moving and Storage/Larry L. Biggs d/b/a Valley Moving and Storage of Spokane, App. No. P-68909 (January 1986).

A transferor who sold its local facilities and did not continue to advertise in the Seattle area, but who could demonstrate local cartage service in the Seattle area and who held itself out to the trade through referrals, has demonstrated activity and holding out sufficient for transfer. WAC 480-12-050(4)(a). Order M. V. No. 130930, In re Courtesy Moving & Storage, Inc./OMI, Inc., App. No. P-67939 (December 1984).

### **WAC 480-12-050 (cont.)**

When a permit holder of common carrier household goods authority demonstrates only four shipments in the test year, all in the first two months; conducts extensive transportation under other portions of its permit; ceases advertising household goods transportation during the test year; sells some specialized equipment during the test year and ends its national shipping agency agreement; but retains some specialized equipment, it does not establish that it was ready, willing and able and holding itself out to provide service throughout the test year. Its claims that economic slowdown was the reason for reduced shipments are not credible. WAC 480-12-050(4)(a). Order M. V. No. 129400, In re Peninsula Truck Lines, Inc./Statewide Movers, Inc., App. No. P-67307 (March 1984).

Penalty assessments that are to be partially mitigated if the carrier commits no further violations during a specified period, do not create a probation period in which a carrier's authority may not be transferred; the penalty assessments produce no threat of loss of permit authority. RCW 81.80.270; WAC 480-12-050(4).

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Order M. V. No. 129056, In re State Transfer Co., Inc./Interstate Heavy Hauling, Inc., App. No. P-67014 (March 1984).

Demonstration of prior Commission orders recognizing knocked down cartons as "empty containers", and a showing of shipping documents that demonstrate such activity by the transferor, provide a basis for asserting that a carrier held itself out to the public as a hauler of empty containers for purposes of a transfer of authority. WAC 480-12-050(4)(a). Order M. V. No. 128909, In re Herrett Trucking Co., Inc./3-W Trucking, Inc., App. No. P-64846 (December 1983).

A carrier who held itself out to the public and solicited business--although economic conditions restricted operations--was ready, willing, and able to conduct business during the test period, and its authority may be transferred. WAC 480-12-050(4)(c). Order M. V. No. 129058, In re State Transfer Co. Inc./Peninsula Truck Lines, Inc., App. No. P-67007 (September 1983).

When credible evidence exists that a transferor reasonably advertised its heavy machinery authority, the Commission will not reject a finding that the carrier held itself out as a carrier of heavy machinery. WAC 480-12-050(4)(a). Order M. V. No. 128209, In re S & J Hauling, Inc./System Transfer of Longview, Inc., App. No. P-67007 (September 1983).

The Commission uses an objective test to establish a permit holder's readiness, willingness, and ability to conduct operations. Evidence of actual activity combined with advertising and solicitation of business, even when activity is greatly reduced due to depressed economic conditions, supports readiness, willingness, and holding out, and establishes the availability of the permit to be transferred. WAC 480-12-050(4)(a)(d). Order M. V. No. 127839, In re Oak Harbor Freight Lines, Inc. d/b/a Oak Harbor Freight Lines/L.L. Buchanan Company, Inc., d/b/a Buchanan Auto Freight, App. No. P-66516 (August 1983).

A determination of the extent to which a transferor held himself out to do business, nineteen years past, is one of fact depending largely on the credibility of the witness; and when there is substantial evidence to support a proposed order's finding on the evidence, the finding will not be disturbed. WAC 480-08-240(13); WAC 480-12-050(4). Order M. V. No. 128063, In re Paul & Randal Savage/Golden Grain Trucking Co., App. No. P-66336 (August 1983).

### **WAC 480-12-050 (cont.)**

Without solicitation or reasonable advertising and without evidence linking the work performed by the corporation to the authority sought to be transferred, a permit holder cannot demonstrate activity or holding out that establishes that the authority may be transferred. WAC 480-12-050(4)(b). Order M. V. No. 127922, In re McKenzie Moving & Storage, Inc./Dedicated Trucking, Corporation, App. No. P-66727 (July 1983).

A permit holder whose only three instances of local cartage general freight transportation were performed in conjunction with its warehouse business and not as common carriage; who makes only vague references to any other general freight transportation; and whose solicitation efforts were aimed at obtaining household goods transportation, renders its carrier's general freight authority not subject to transfer. WAC 480-12-050(4)(a). Order M. V. No. 127922, In re McKenzie Moving and Storage, Inc./Dedicated Trucking Corporation, App. No. P-66727 (July 1983).

A permit holder who claims that declining business prevented common carrier activity, but extensively used

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equipment in proprietary service and failed to hold itself out for common carrier activity during the test period, reflects a choice to abandon common carrier activity. The permit holder was not ready, willing and able or holding itself out for service. WAC 480-12-050(4)(a),(c). Order M. V. No. 127245, In re Jarl Construction, Inc./Fisher Quarry Rock Products, Inc., App. No. P-66349 (March 1983).

A permit holder who had a one-line listing in a phone book, could identify only one potential customer solicited, and transported no shipments in the authorized commodity classification except five shipments for a commonly-owned business, did not hold itself out to conduct operations as required. WAC 480-12-050(4)(a). Order M. V. No. 126844, In re Charles and Rosemary Mettler/Larry and Peggy Bergstrom, App. No. P-66296 (January 1983).

### **--- Test Period; Unusual Circumstances Allowing Use of Nonstandard Test Period; Transferee's Acquisition of Effective Control Requiring Use of Nonstandard Test Period**

A test year for purposes of permit transfer must come from a period of lawful operations under the permit; a person is not legally able to conduct carrier operations unless authorized to do so by the Commission. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 145830, WUTC v. Toledo Trucking, Inc., Hearing No. H-5005, and In re Toledo Trucking, Inc./Elmer Cook Trucking, Inc., App. No. P-75157 (December 1992).

In a transfer proceeding, voluntary cessation of operations due to financial difficulty may constitute an "unusual circumstance" making appropriate the use of a nonstandard test period to examine for evidence of operations. WAC 480-12-050(4)(c). Order M. V. No. 145330, In re Great Northern Enterprises, Inc./Max G. Swick, App. No. P-75038 (July 1992).

The Commission may not examine, for evidence of operations, a test period that is later than the date on which an application for transfer of permit rights was filed. WAC 480-12-050(4)(c). Order M. V. No. 143692, In re Rambler Cincon, Inc./Rambler Trucking, Inc., App. No. P-73907 (July 1991), affirming Order M. V. No. 143329 (May 1991).

### **WAC 480-12-050 (cont.)**

A doubling of transferor's insurance rates, a loss of a major business account, and a reduction in revenue to the point where the principals had depleted their personal revenue funds and were unable to borrow additional money are unusual circumstances justifying use of an alternative test year in a transfer application. WAC 480-12-050(4)(c),(e). Order M. V. No. 138587, In re Great Northern Truck Express, Inc./Peninsula Truck Lines, Inc., App. No. P-71837 (December 1988).

When there is substantial evidence to support the proposed order's finding that the transfer of a common carrier permit to the transferee was arranged and consummated, subject to regulatory approval, prior to the assumption of control of the transferor by a third party, a grant of the transfer application is appropriate. WAC 480-12-050. Order M. V. No. 138302, In re Petroleum Transport, Inc./Blue Line Transportation Co., Inc., App. No. P-71224 (October 1988).

In a manager's application to acquire control of a carrier, a transfer of effective control is not found when the owner continued to exercise the ultimate discretion, responsibility, direction, and control of carrier operations and the manager deferred to the owner. An owner need not manage day-to-day operations in order to retain control of the business. In many instances professional management is appropriate and



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necessary. WAC 480-12-050(5). Order M. V. No. 137752, In re James McConnell/Alkire Trucking, Inc., App. No. P-71339 (May 1988).

A cessation of activity due to a transferor's inability to obtain insurance required for motor carrier operations may constitute an unusual circumstance allowing use of a nonstandard test period under WAC 480-12-050(4)(e). Order M. V. No. 136690, In re West Coast Truck Lines, Inc./Dave Williams Logging, Inc., App. No. P-70682 (October 1987).

In the absence of unusual circumstances, the test year will be the year prior to filing the application for transfer of the permit. Entry into negotiations and the making of a contract for sale precede every application for transfer of permit authority and do not constitute unusual circumstances. WAC 480-12-050(4)(c). Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

When effective control of a permit is passed to a transferee prior to an application for transfer, the proper test year is the period one year prior to the transfer of effective control. WAC 480-12-050(4)(c). Order M. V. No. 126465, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1982). WAC 480-12-050(4)(c). Order M. V. No. 133106, In re E.B.P., Inc. d/b/a Valley Moving and Storage/Larry L. Biggs d/b/a Valley Moving and Storage of Spokane, App. No. P-68909 (January 1986).

A purchaser who acquires a truck, purchases advertising, arranges for telephone numbers, does all billing for work performed, hires employees, and whose only remaining duty to the transferor is to pay the contract price for the business, has acquired effective control of a permit, requiring the application of a non-standard test year. WAC 480-12-050(4)(c). Order M. V. No. 133106, In re E.B.P., Inc. d/b/a Valley Moving and Storage/Larry L. Biggs d/b/a Valley Moving and Storage of Spokane, App. No. P-68909 (January 1986).

### **WAC 480-12-050 (cont.)**

Standards for unusual circumstances that would permit reference to a nonstandard test period in transfer applications are: (1) the operations are not representative of the carrier's ordinary service to the public; (2) the circumstances are not intentionally created by the carrier and are beyond the carrier's control, and; (3) the permit holder is diligently pursuing a resolution of the circumstances hindering its operations under the permit. RCW 81.80.270; WAC 480-12-050(4)(c). Order M. V. No. 132877, In re Paffile Truck Lines Inc./Service Truck Lines, Inc.; Paffile Truck Lines Inc./Oak Harbor Freight Lines, Inc., App. Nos. P-68392; P-68434 (December 1985).

Bankruptcy is an unusual circumstance that will allow the Commission to apply an alternative test year. When a transferor ceased operations due to bankruptcy and at all times diligently sought to resolve the problems facing the carrier, it has established grounds for use of a nonstandard text year. WAC 480-12-050(4)(c). Order M. V. No. 132877, In re Paffile Truck Lines, Inc./Service Truck Lines, Inc.; Paffile Truck Lines, Inc./Oak Harbor Truck Lines, Inc., App. Nos. P-68392; P-68434 (December 1985).

Involuntary insolvency of a carrier is an unusual circumstance justifying the use of a nonstandard test year in a transfer application. RCW 81.80.270; WAC 480-12-050(4)(c). Order M. V. No. 132877, In re Paffile Truck Lines Inc./Service Truck Lines, Inc.; Paffile Truck Lines Inc./Oak Harbor Freight Lines, Inc., App. Nos. P-68392; P-68434 (December 1985).

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Voluntary unlawful action is not an "unusual circumstance" permitting use of a nonstandard test year in a transfer application. WAC 480-12-050(4)(c). Order M. V. No. 132660, In re K & K, Inc./ M & G, Inc., App. No. P-68092 (October 1985); Order M. V. No. 132661, In re Dalbec, Inc./Fifty-Seven, Inc., App. No. P-68093 (October 1985).

If the principal of a carrier retains and exercises final control over operations, there is no improper assumption of effective control despite a broad exercise of management powers over day to day operations. A finding of dominion or control is determined by objective circumstances. WAC 480-12-050(4)(c). Order M. V. No. 130276, In re Brooks Truck Line, Inc./Ed's Moving & Storage, Inc., App. No. P-67912 (September 1984).

If a manager takes over diverse and responsible operations of the company, but the principals still maintain ultimate responsibility, direction, and control of the company, the appropriate test year is the year immediately prior to application for transfer. WAC 480-12-050(4)(c). Order M. V. No. 128209, In re S & J Hauling, Inc./System Transfer of Longview, Inc., App. No. P-67007 (September 1983).

When a contract is signed to pass control of a carrier in the future, but effective control of the permit is not yet passed, the appropriate test period is one year immediately prior to the filing of the application for transfer. WAC 480-12-050(4)(c). Order M. V. No. 127839, In re Oak Harbor Freight Lines, Inc. d/b/a Oak Harbor Freight Lines/L.L. Buchanan Company, Inc., d/b/a Buchanan Auto Freight, App. No. P-66516 (August 1983).

### **WAC 480-12-050 (cont.)**

A person is not legally able to conduct carrier operations unless permitted to do so by the Commission. A test year for purposes of permit transfer must come from a period of lawful operations under the permit. RCW 81.80.270; WAC 480-12-050(4)(a). Order M. V. No. 128063, In re Paul & Randal Savage/Golden Grain Trucking Co., App. No. P-66336 (August 1983).

The illness of a sole proprietor, dependent on his own efforts for company operations, may justify the use of an unusual test year in a transfer application. RCW 81.80.270; WAC 480-12-050(4)(c). Order M. V. No. 127857, In re Bi-County Trucking, Inc./Common Carriers Inc., App. No. P-66173 (July 1983).

A permit holder's involuntary bankruptcy constitutes an unusual circumstance allowing the use of a nonstandard test year in transfer proceedings. WAC 480-12-050(4)(c). Order M. V. No. 127369, In re Exley Express, Inc./Market Transport, LTD., App. No. P-66624 (April 1983).

When the Commission determines on review that a different test period should be utilized than the year the presiding officer considered, the Commission may allow reopening to take evidence on activity during the appropriate test period. Former WAC 480-08-050(16); WAC 480-12-050. Order M. V. No. 126785, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (April 1983).

An applicant seeking application of a nonstandard test year in a transfer proceeding has the burden of justifying its use. WAC 480-12-050(4)(c). Order M. V. No. 127245, In re Jarl Construction, Inc./Fisher Quarry Rock Products, Inc., App. No. P-66349 (March 1983).

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A transferee entitled to all but twelve percent of the carrier's profits, who is making all of the day-to-day decisions for the corporation, and who has agreed to indemnify and hold harmless the transferor, has effective control of the permit of the transferor. WAC 480-12-050(4)(c). Order M. V. No. 126465, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1982).

Legal title or "paper title" is irrelevant to the question of effective control for purposes of a permit transfer. WAC 480-12-050(4)(c). Order M. V. No. 126465, In re John Huffman/Nick's Hauling Service, Inc., App. No. P-65687 (November 1982).

### **--- Cessation of Operations During Test Period**

A carrier's intention to abandon authority is measured objectively. When a transferor who ceases operations due to bankruptcy does not make any effort to sell the authority within a reasonable period after the bankruptcy trustee abandons the permit as unadministered property, its lack of reasonable effort may be viewed as evidencing an intention to abandon the permit. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 147947, In re General Delivery Service, Inc./James J. Brunner, d/b/a All Star Moving Service, App. No. P-76507 (July 1994).

### **WAC 480-12-050 (cont.)**

Relatively short interruptions in the operation of a permit during a business reorganization are not unexplained cessations of activity such as will render a permit not subject to transfer. RCW 81.80.270; WAC 480-12-050. Order M. V. No. 145901, In re Horizon Trucking, Inc./Horizon Trucking & Excavating Co., Inc., App. No. P-75496 (January 1993).

For purposes of WAC 480-12-050(4)(e), a transferor may have no control over the financial circumstances that cause it to cease operations even though the financial circumstances may be the result of bad business decisions voluntarily made. WAC 480-12-050(4)(e). Order M. V. No. 145330, In re Great Northern Enterprises, Inc./Max G. Swick, App. No. P-75038 (July 1992).

A cessation of hauling activity during the test period does not necessarily demonstrate an intent to abandon a permit. The lack of pertinent business may be a circumstance over which a permit holder has no control. WAC 480-12-050(4)(e). Order M. V. No. 143760, In re Mercer Trucking Co., Inc./ Zeph H. Robinson, d/b/a Robinson Excavating & Trucking, App. No. P-74033 (August 1991).

A cessation of operations during a test year is not caused by circumstances over which the transferor had no control, although the transferor's principal suffered poor health, when the principal participated regularly in company operations, transferor had several full-time employees, and transferor conducted normal, sizeable interstate operations during the period when no intrastate activity occurred. WAC 480-12-050(4)(e). Order M. V. No. 143329, In re Rambler Cincon, Inc./Rambler Trucking, Inc., App. No. P-73907 (May 1991); recon. denied, Order M. V. No. 143692 (July 1991).

Two months without activity while trying to sell a common carrier permit does not demonstrate an intent to abandon a permit. WAC 480-12-050(4)(a). Order M. V. No. 136857, In re Dale E. Dobson/Gladys Heinrich, d/b/a Flying "H" Express, App. No. P-70879 (November 1987).

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A cessation of activity due to a transferor's inability to obtain insurance required for motor carrier operations may constitute an unusual circumstance allowing use of a nonstandard test period under WAC 480-12-050(4)(e). Order M. V. No. 136690, In re West Coast Truck Lines, Inc./Dave Williams Logging, Inc., App. No. P-70682 (October 1987).

A carrier whose permit authorizes both general freight, local cartage in the city of Seattle, and household goods authority statewide, who undertook only household goods transportation in the test year and undertook only to advertise its household goods services, has not maintained its general freight authority. RCW 81.80.270; WAC 480-12-050(4)(e). Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

The intention to abandon a permit is measured objectively-- by the actions of the permit holder in the circumstances in which it finds itself. If a carrier ceased operations due to bankruptcy, but at all times attempted diligently to resolve problems facing it, no intention to abandon authority is shown. WAC 480-12-050(4)(e). Order M. V. No. 132877, In re Paffile Truck Lines, Inc./Service Truck Lines, Inc.; Paffile Truck Lines, Inc./Oak Harbor Truck Lines, Inc., App. Nos. P-68392; P-68434 (December 1985).

### **WAC 480-12-050 (cont.)**

A permit holder who claims that declining business prevented common carrier activity, but extensively used equipment in proprietary service and failed to hold itself out for common carrier activity during the test period, reflects a choice to abandon common carrier activity. The permit holder was not ready, willing and able or holding itself out for service. WAC 480-12-050(4)(a),(c). Order M. V. No. 127245, In re Jarl Construction, Inc./Fisher Quarry Rock Products, Inc., App. No. P-66349 (March 1983).

### **--- Trafficking in Permits**

Although an applicant deferred prosecution of an application for transfer while pursuing Seattle Commercial Zone authority that was subsequently denied, and thereafter revived the original application, circumstances show an earnest pursuit of authority. The transfer of the full permit prior to a grant of authority does not constitute trafficking in permits and should be allowed. WAC 480-12-050(5). Order M. V. No. 126439, In re United Cartage, Inc./Anchorage Fairbanks Freight Service, Inc., App. No. P-65929 (October 1982).

### **--- Multiple Expressions of Same Authority Merge; Prohibition Against Creation of Duplicative Rights; Other Improper Division of Permit Rights**

A common carrier permit is to be construed as a single unit. If a permit authorizes transportation of a given commodity under two or more sections, the alternative expressions merge and are a single authority. The permit holder need not choose which portion of the permit it is exercising. The transportation provided exercises the permit authority as a whole. RCW 81.80.100; 81.80.270; WAC 480-12-050(5).

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991), recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. denied, Order M. V. No. 143256 (May 1991); vacated and

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remanded on other grounds, Order M. V. No. 143870 (September 1991).

Order M. V. No. 134486, Valley Transport, Inc./LTI, Inc., d/b/a Milky Way, App. No. P-69759 (August 1986).

A carrier has but one operating authority within a permit, although there may be two or more individual statements of authority to transport the same commodity. Separate expressions of permit language for identical commodities merge, and are not separately available for alienation. RCW 81.80.100; 81.80.270; WAC 480-12-050.

Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. denied, Order M. V. No. 143256 (May 1991); vacated and remanded on other grounds, Order M. V. No. 143870 (September 1991).

Order M. V. No. 133160, In re Paul F. and Nancy S. Kimball/Allison-Mitchell Transfer, App. No. P-69103 (February 1986).

### **WAC 480-12-050 (cont.)**

The Commission will not authorize the splitting of a commodity classification set forth in Appendix A to WAC 480-12-990 in a transfer proceeding. For example, a carrier with generic bulk liquid commodities authority may not split some "liquid petroleum products" from other "liquid petroleum products." RCW 81.80.270; WAC 480-12-050; 480-12-990. Order M. V. No. 148103, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/ McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (August 1994).

In a transfer application, if the Commission denies authorization to transfer a portion of the rights sought to be transferred, it must deny the application in its entirety unless the applicants consent to elimination of those rights from the permit in conformity with WAC 480-12-050. Order M. V. No. 147727, In re Maddox Transfer & Storage Corp. (Oregon)/ Maddox Transfer & Storage Corp. (Washington), App. No. P-77258 (May 1994).

The Commission will deny a common carrier's application to transfer part of its rights in a permit when the partition would result in the separation of commodities from a class of substantially related commodities or from a commodity classification in WAC 480-12-990. RCW 81.80.270; WAC 480-12-050; 480-12-990. Order M. V. No. 147766, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (April 1994).

Although a generic commodity classification, such as "bulk liquid commodities," generally may be divided in a transfer proceeding, the division may not split a commodity classification set forth in WAC 480-12-990. Thus, e.g., a carrier with generic bulk liquid commodities authority may split that authority between "liquid petroleum products" and "refrigerated liquid products," but may not split some "liquid petroleum products" from other "liquid petroleum products." RCW 81.80.270; WAC 480-12-050; 480-12-990. Order M. V. No. 147766, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (April 1994).

It is inconsistent with the purpose of commercial zones to split them apart, and the Commission will not knowingly allow divisions of commercial zone authority to result from any transfer of authority. RCW

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81.80.270; WAC 480-12-050; 480-12-081. Order M. V. No. 146918, In re Collins Transport Service, Inc., App. No. P-76894 & In re Becker Trucking, Inc., App. No. P-76919 (August 1993).

A grant of temporary authority pending transfer that would create duplicating authority in violation of WAC 480-12-050(5) is contrary to the public interest. RCW 81.80.170; WAC 480-12-033; 480-12-050(5). Order M. V. No. 146588, In re Becker Trucking, Inc., App. No. P-76919 (June 1993); Order M. V. No. 146589, In re Collins Transport Service, Inc., App. No. P-76894 (June 1993).

The prohibition in WAC 480-12-050(5) against separating a commodity from a class of substantially related commodities or a commodity classification relates to transfers of authority, not to original grants of authority. RCW 81.80.070 (entry common carriers: need); WAC 480-12-050(5). Order M. V. No. 146110, In re System Transfer of Longview, Inc., App. No. E-75475 (February 1993).

### **WAC 480-12-050 (cont.)**

To the extent a Commission grant of authority duplicates authority already held by the carrier, it merges with the authority already held, does not confer any additional operating right, and is not separately available for transfer. WAC 480-12-050. Docket No. TV-920324, In re Victor J. Scalzo, d/b/a Thomas Scalzo Co. (October 1992).

Duplicated authority must be deleted from a transferor's permit even if the transferor is presently engaged in a business that is dissimilar from that which the transferee proposes to conduct. WAC 480-12-050(5). Order M. V. No. 144849, In re Terry & Mary Burton, d/b/a All 48 Truck Lines/Bart B. Smith d/b/a B. Smith & Sons, App. No. P-75232 (May 1992).

WAC 480-12-050(5) forbids the Commission from accepting an amendment to an application for partial transfer of a permit that would divide the permit in such a way as to separate a commodity or group of commodities from a commodity classification in Appendix A. WAC 480-12-050. Order M. V. No. 143870, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating, on other grounds, Order M. V. No. 142724 (February 1991).

A carrier may not transfer from its permit the authority to conduct operations, while retaining the authority to conduct those operations. RCW 81.80.270; WAC 480-12-050(5). Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. denied, Order M. V. No. 143256 (May 1991).

The authority to transport a specific commodity may not be separated by transfer from the authority to transport a related class of commodities. WAC 480-12-050(5). Order M. V. No. 142217, In re Pacific Western Transport, Inc./Wallace Colville Motor Freight, Inc., Hearing No. P-73526 (November 1990).

A partial transfer that would not produce clearly defined, geographically separate territorial divisions, is not permissible. WAC 480-12-050(5). Order M. V. No. 142217, In re Pacific Western Transport, Inc./Wallace Colville Motor Freight, Inc., Hearing No. P-73526 (November 1990).

In an application to transfer a portion of a common carrier permit, authority to transport general freight over a regular route is a different service from that authorizing transportation of general freight over irregular routes. However, when a complete duplication of service results, the policy reason for the distinction no longer exists and the duplication must be eliminated. WAC 480-12-050(5). Order M. V. No. 137581, In re

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Bremerton Transfer & Storage Co. Ltd. d/b/a Olympic Freight Lines/Security Parcel Express, Inc., App. No. P-70737 (April 1988).

Duplicating authority exists whenever the same commodity can be transported between the same points under two resulting permits. WAC 480-12-050(5). Order M. V. No. 136758, In re Bremerton Transfer & Storage Co., Ltd., d/b/a Olympic Freight Lines/Security Parcel Express, Inc., App. No. P-70737 (October 1987).

### **WAC 480-12-050 (cont.)**

In an application to transfer a common carrier permit, bulk liquid commodities, and bulk dry commodities each constitutes a class of substantially related commodities pursuant to WAC 480-12-050(5), and defines commodity classes that may therefore be deleted from the permit. Order M. V. No. 135977, In re North Counties Freight Lines, Inc., App. No. P-70587 (June 1987).

A carrier may be actively exercising only portions of its permit. If this is the case, and the carrier does not hold itself out to the public as a carrier of commodities of a defined classification, then the classification of authority within the permit may not be subject to transfer. The Commission ordinarily will not, however, split commodity groupings on a basis finer than a defined classification, especially when the transferor held itself out to the public to transport all of the commodities authorized under its permit. WAC 480-12-050(5). Order M. V. No. 134486, Valley Transport, Inc./LTI, Inc., d/b/a Milky Way, App. No. P-69759 (August 1986).

The Commission may condition approval of a transfer upon the deletion of authority that the transferee does not propose to use. RCW 81.80.200; WAC 480-12-050(5). Order M. V. No. 133078, In re Merry Moving & Storage Co./Fleetfoot Max, Inc. d/b/a Fleetfoot Messenger Service, App. No. P-68499 (February 1986).

The rule against substantially duplicating authorities is not violated when similar commodity and territorial rights are possessed by two commonly owned carriers when one is a contract carrier and one is a common carrier. WAC 480-12-050(5). Order M. V. No. 129298, In re Bi-County Trucking, Inc./Common Carriers Inc., App. No. P-66173 (April 1984).

Commission policy is against restrictions that separate specific commodities from commodity groupings. A permit holder who carried some but not all of the commodities under the bulk liquid petroleum products classification, may transfer authority for the entire classification. RCW 81.80.100; WAC 480-12-050(5). M. V. No. 129445, In re Western Washington Transportation, Inc./American Transport, Inc., App. No. P-67573 (April 1984).

When a permit holder seeks to transfer one of two duplicating authorities, the Commission will require that the duplicated authority remaining in the transferor's permit be deleted. RCW 81.80.100; WAC 480-12-050(5). Order M. V. No. 129056, In re State Transfer Co., Inc./Interstate Heavy Hauling, Inc., App. No. P-67014 (March 1984).

The authority to pick up and deliver shipments in Seattle that are destined to or from points north of the city does not duplicate the authority to pick up and deliver shipments in Seattle that are destined to or from

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points south of the city. RCW 81.80.100; WAC 480-12-050(5). Order M. V. No. 129057, In re State Transfer Co., Inc./Edmonds-Alderwood Auto Freight Company, App. No. P-67015 (March 1984).

It is permissible to divide radial authority at a common radial point, so long as there is no duplication of authority. RCW 81.80.100; WAC 480-12-050(5). Order M. V. No. 129058, In re State Transfer Co., Inc./Peninsula Truck Lines, Inc., App. No. P-67016 (March 1984).

### **WAC 480-12-050 (cont.)**

An election between contract or common carrier authority should be required only when the record indicates likely future improper preferences or discrimination. An absolute rule forbidding dual contract and common carrier operations may work to deny service despite public need. (Overrules Order M. V. No. 96001, In re Santry Trucking, App. No. P-47045 (1970). WAC 480-12-050(5). Order M. V. No. 129173, In re C & C Air Freight, Inc., App. No. E-18764 (February 1984).

An applicant seeking to possess both contract and common carrier authority should not be forced to choose between the two unless the record shows the likelihood of future improper discrimination; the mere opportunity to discriminate is not enough to force an election. WAC 480-12-050(5). Order M. V. No. 129284, In re Blackburn Truck Lines, Inc., App. Nos. E-18631; E-18821 (February 1984).

When different commodity descriptions in different portions of a permit allow hauling the same commodity, the authorities are duplicative. Duplicative authorities will be construed as a single authority for purposes of transfer. When a permit holder transfers a portion of its permit, the duplicating portions in the retained permit authority will be deleted. RCW 81.80.100; WAC 480-12-050(5). Order M. V. No. 127857, In re Bi-County Trucking, Inc./Common Carriers Inc., App. No. P-66173 (July 1983).

If affiliated ownership would result from a transfer, the Commission may refuse to grant the transfer unless the permit holder voluntarily relinquishes one authority. Substantially duplicated authority is forbidden. WAC 480-12-050(5). Order M. V. No. 127857, In re Bi-County Trucking, Inc./Common Carriers Inc., App. No. P-66173 (July 1983).

It is inconsistent with Commission policy to authorize operations under contract carrier authority which would duplicate common carrier authority already possessed by the applicant. WAC 480-12-050(5). Order M. V. No. 126673, In re Martin Ruiter d/b/a Martin's Feed Company, App. No. P-66095 (December 1982). (But see Order M. V. No. 129173, In re C & C Air Freight, Inc., App. No. E-18764 (February 1984)).

### **WAC 480-12-065 Permits, cancelled; New application.**

The Commission will dismiss its complaint against a carrier for failure to maintain requisite insurance, if that carrier provides sufficient evidence of insurance prior to entry of a final order; the Commission will rescind the initial order of cancellation, dismiss the complaint, and reinstate the carrier's certificate of authority. RCW 81.04.210; WAC 480-12-065; WAC 480-12-350. Order M. V. C. No. 1879, WUTC v. American Indian Elders, Hearing No. H-4993 (August 1990).

In order to qualify for reinstatement of a motor carrier permit, the permit holder must file a new application within 30 days of the date of cancellation and the permit holder must be without fault in the cancellation. WAC 480-12-065. Order M. V. No. 140304, In re Joseph F. Saccomanno, d/b/a Craig Transfer & Storage



Co., Inc., App. No. P-72429 (October 1989).

**WAC 480-12-065 (cont.)**

A "petition for reinstatement" which is filed outside of the time required by rule, and which does not state grounds for rehearing, does not state a basis for relief and will be denied. WAC 480-08-250(1); WAC 480-12-065. Order M. V. No. 139930, In re Richard B. Morris (July 1989).

An applicant whose former permit was cancelled, who now applies for authority in his old territory, must show evidence of need for a carrier. A demonstration of the conditions for reissuance of a cancelled permit, does not demonstrate that the public convenience and necessity require additional authority. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-065. Order M. V. No. 133363, In re Seafair Moving & Transfer, Inc., App. No. P-69394 (February 1986).

The mere statement of a Commission employee to a person whose permit has been cancelled for cause, that he "...can probably get the permit reinstated..." does not prevent the Commission from denying an application for reinstatement of the permit. Estoppel; WAC 480-12-065. Order M. V. No. 133363, In re Seafair Moving & Transfer, Inc., App. No. P-69394 (February 1986).

**WAC 480-12-070 Permit rights defined--Classification of carriers.**

Weight restrictions in permits are disfavored and should be imposed only when they are clearly indicated. WAC 480-12-070; 480-12-990. Order M. V. No. 146950, In re Lampson Railroad Contractors, Inc., App. No. P-76644 (September 1993).

A weight restriction is indicated when it marks a sufficiently clear dividing line between needed and unneeded service and when the applicant's actions may have contributed to a lack of service from existing carriers in the weight category specified. WAC 480-12-070; 480-12-990. Order M. V. No. 146950, In re Lampson Railroad Contractors, Inc., App. No. P-76644 (September 1993).

The Commission may correct permit language that incorrectly labels authority when the nature of the authority granted clearly does not fit the label. WAC 480-12-070; 480-12-990. Order M. V. No. 146621, In re Acme Inter-City Freight Lines, Inc./Kenneth E. Kellar, App. No. P-76743 June 1993).

**WAC 480-12-080 "Local cartage" defined, and restrictions.**

Local cartage authority is needed only for service that commences in a city and terminates in the same city. WAC 480-12-080(2). Order M. V. No. 131210, In re Signal Electric Inc., App. No. P-68373 (January 1985).

**480-12-081 Commercial zones defined.**

It is inconsistent with the purpose of commercial zones to split them apart, and the Commission will not

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knowingly allow divisions of commercial zone authority to result from any transfer of authority. RCW 81.80.270; WAC 480-12-050; 480-12-081. Order M. V. No. 146918, In re Collins Transport Service, Inc., App. No. P-76894 & In re Becker Trucking, Inc., App. No. P-76919 (August 1993).

### **WAC 480-12-082 Terminal areas defined.**

Each of the limitations and restrictions applying to an applicant's qualifying underlying authority applies to an extension granted pursuant to RCW 81.80.410. Restrictions on that underlying authority cannot be removed in a proceeding to add terminal area pickup and delivery authority, but must be accomplished by full application for an extension of authority. RCW 81.80.410; WAC 480-12-082. Order M. V. No. 141103, In re Peninsula Truck Lines, Inc., App. No. E-19633 (March 1990).

In an application for terminal area authority, the extension of authority is territorial only and the limitations and restrictions on the general freight authority contained in the original permit must be carried over and included in the terminal area authority. RCW 81.80.410; WAC 480-12-082. Order M. V. No. 140681, In re Action Express, Inc., App. No. E-19642 (December 1989); Order M. V. No. 140688, In re Joy Motor Freight, Inc., App. No. E-19688 (December 1989); Order M. V. No. 140698, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (December 1989); Order M. V. No. 140700, In re Okanogan-Seattle Transport Co., Inc., App. No. E-19689 (December 1989).

Any grant of authority pursuant to RCW 81.80.410 and WAC 480-12-082 must be limited to the same types of service and commodity as were authorized and held by the applicant or its predecessor in interest on July 28, 1982. Order M. V. No. 140484, In re Metro Hauling, Inc., App. No. E-19614 (November 1989).

An extension of intercity common carrier authority to provide terminal area pick up and delivery service will be granted to applicants who held pertinent general freight authority on July 28, 1982. RCW 81.80.410; WAC 480-12-082. Order M. V. No. 140484, In re Metro Hauling, Inc., App. No. E-19614 (November 1989).

A grant of terminal area authority under RCW 81.80.410 extends only a carrier's territorial authority. The Commission may only add the terminal areas to expand the vicinity pickup and delivery service; it may not alter underlying intercity authority. RCW 81.80.410; WAC 480-12-082. Order M. V. No. 138133, In re Metro Hauling, Inc., App. No. E-19614 (August 1988). Related filings: Order M. V. No. 138134, In re Great Northern Truck Express, Inc., App. No. E-19633 (August 1988); Order M. V. No. 138132, In re Erdahl Brothers Trucking, Inc., App. No. E-19653 (August 1988).

Qualification for a grant of terminal area authority is not dependent on having a named city as a point of service as is the case with Commercial Zones. WAC 480-12-082(2) specifically includes "...carriers of general freight having authority as part of their intercity service to perform pickup or delivery at any place in such zone or area." RCW 81.80.410; WAC 480-12-082(2). Order M. V. No. 138133, In re Metro Hauling, Inc., App. No. E-19614 (August 1988).

In granting an extension of inter-city general freight common carrier authority to provide pickup and delivery services in terminal areas, the Commission may only expand the vicinity of service; it may not alter underlying intercity authority. RCW 81.80.410; WAC 480-12-082. Order M. V. No. 138096, In re Action Express, Inc., App. No. E-19642 (August 1988).

**WAC 480-12-085 Common or contract carrier may not act as private carrier.**

The provisions of WAC 480-12-085 do not apply to carriers of forest products by their own terms. Order M. V. No. 146906, In re Tisco Parts & Machine, Inc., App. No. P-76770 (August 1993).

Waiver of WAC 480-12-085 will be granted if the applicant establishes that it will operate as a common carrier a majority of the time and will not limit its service to the public in favor of serving its own transportation needs. RCW 81.80.070 (entry common carriers: public convenience); WAC 480-12-085. Order M. V. No. 143235, In re Emery & Clements, Inc., App. No. E-20049 (May 1991).

The Commission may, on its own motion, reverse a proposed order that denies an unprotested waiver of WAC 480-12-085 when there is evidence of record that the waiver is consistent with the public interest. WAC 480-08-240(13). Order M. V. No. 127397, In re Ray Gimlin d/b/a Beaver Falls Trucking, App. No. E-18697 (April 1984).

When a proposed order inadvertently grants a waiver of WAC 480-12-085 in circumstances when such a waiver is unnecessary under terms of the rule, the Commission may correct the error. WAC 480-08-240. Order M. V. No. 129470, In re The Nestaval Corporation, App. No. P-67706 (April 1984).

**WAC 480-12-100 Forwarders and brokers.**

**Cross Reference**

Brokers: See RCW 81.80.070 (entry common carriers: brokers).

A shipper or association of shippers may be exempt from regulation when it consolidates or forwards shipments using common carriage. A registered exempt shipping association may not tender shipments to, and the Commission may not authorize shipments via, a contract carrier. RCW 81.80.045; WAC 480-12-100. Order M. V. No. 133474, In re James R. Tolin d/b/a Punctual Transportation, App. No. P-68274 (February 1986).

The mere contention that Commission rules limiting freight forwarders to the use of common carriers is an antitrust violation, without showing any statute, rule, or case authority, is without merit. WAC 480-08-250(2); WAC 480-12-100. Order M. V. No. 133958, In re James R. Tolin d/b/a Punctual Transportation, App. No. P-68274 (April 1986).

An enterprise that contracts or arranges for transportation from two or more carriers, that solicits business, dispatches vehicles, and bills and collects in the enterprise's own name, is operating as a broker, whether it collects its fee from the shippers or the carriers. Collecting fees from the carriers does not render the service immune from regulation. RCW 81.80.010(12); WAC 480-12-100(2). Cause TV-1776, Northwest Potato Trucking Division, Inc., (April 1985).

An enterprise which handles billing and collecting, keeps records, and maintains a message center, and which provides money advances and vehicle repair services--and no more--is not acting as a common carrier broker. RCW 81.80.010(12); WAC 480-12-100(2). Cause TV-1776, Northwest Potato Trucking Division, Inc. (April 1985).

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### **WAC 480-12-100 (cont.)**

Evidence of only limited territorial need in an application for statewide brokerage authority will support a grant of authority only to the extent of the need shown. RCW 81.80.010(12); 81.80.070; WAC 480-12-100(2). Order M. V. No. 130356, In re Continental Traffic Company, Inc., App. No. P-67117 (September 1984).

Although a broker must prove that its proposed service is reasonably required by present or future public convenience and necessity, the required proof is not identical to the proof a common carrier must produce. To demonstrate that a broker is needed, an applicant must show that a shipper has a need for the arrangement of transportation and that existing brokers are unable to provide the service. RCW 81.80.070 (brokers); WAC 480-12-100(2). Order M. V. No. 130356, In re Continental Traffic Company, Inc., App. No. P-67117 (September 1984).

Brokers are fully subject to intrastate regulation. When a broker impermissibly uses its bargaining power to obtain lower than authorized transportation rates from carriers, the broker is subject to penalty including possible loss of license. RCW 81.28.210; RCW 81.80.010(12); WAC 480-12-100(2). Order M. V. No. 130356, In re Continental Traffic Company, Inc., App. No. P-67117 (September 1984).

A broker is a person who represents shippers, arranging transportation of their goods for a fee that is paid by the shippers. RCW 81.80.010(12); WAC 480-12-100(2). Order M. V. No. 129662, In re Joyce Mazza & Hazel Gerber, d/b/a Action Brokerage, App. No. P-67597 (May 1984).

Testimony that a supporting shipper would use the applicant if he were able to obtain a flat rate tariff quote, which is not now lawful in intrastate service, does not demonstrate a need for the applicant's services. RCW 81.28.230; WAC 480-12-100(2). Order M. V. No. 129662, In re Joyce Mazza & Hazel Gerber, d/b/a Action Brokerage, App. No. P-67597 (May 1984).

### **WAC 480-12-110 Permit, must abide by--"Tacking"--Extension.**

The "tacking" of irregular route authorities pursuant to WAC 480-12-110 authorized under a public interest standard. Order M. V. No. 136728, In re Metro Hauling, Inc., App. No. E-19363 (October 1987).

### **WAC 480-12-115 Revision of permit.**

Use of a test period may be inappropriate in determining whether a permit should be cancelled for "dormancy"; the issue is whether the carrier is lawfully holding itself out to the public, not whether it did so during a test period. WAC 480-12-115. Order M. V. No. 138749, Mumma Trucking Co., Inc., v. Delta Trucking Co., Inc., Cause No. TV-1706 (December 1988).

### **WAC 480-12-210 Leasing.**

A lease agreement and personal services arrangement in which the lessor/driver is required to assume

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virtually all of the costs of operation and is compensated with a percentage of the revenues generated violates the Commission's leasing rule. WAC 480-12-210. Order M. V. No. 147200, In re Hays Home Delivery (Washington), Inc., d/b/a Hays Home Delivery, App. No. P-76090 (November 1993).

Proposed operations that would violate the leasing rule in WAC 480-12-210 do not automatically disqualify an applicant on the basis of fitness. When the violations do not affect the nature of the common carrier authority, are based on a misinterpretation of the leasing rule, the carrier gives credible assurances of future compliance, and the carrier is able to conduct operations in compliance with the law, the applicant is not precluded from establishing its fitness. RCW 81.80.070 (entry common carriers: fitness-unauthorized operations); WAC 480-12-210. Order M. V. No. 142818, In re ABC-Legal Messengers Inc., d/b/a Couriers - Today/Tonight, App. No. E-19876 (March 1991); recon. denied, Order M. V. No. 143215 (April 1991).

In an equipment lease, both the lessor and the lessee are required to comply with Commission rules. An applicant who has "leased" his equipment to a carrier but then conducted operations under the lessee's permit as though it were his own may be found not fit to receive authority. RCW 81.80.070 (entry common carriers: fitness-unauthorized operations); WAC 480-12-210. Order M. V. No. 142885, In re Roy Holman, d/b/a Early Star Trucking, App.No. P-73252 (February 1991).

Express lease provisions that violate Washington law may preclude a Commission finding that applicant is fit to conduct operations. RCW 81.80.070 (entry common carriers: fitness); WAC 480-12-210. Order M. V. No. 142136, Quad Enterprises, Inc./Group VI, Inc., Hearing No. P-73257 (December 1990).

The Commission will not grant common carrier operating authority to an entity that lacks legal or actual control over carrier operations. WAC 480-12-210(1)(d). Order M. V. No. 142136, Quad Enterprises, Inc./Group VI, Inc., Hearing No. P-73257 (December 1990).

The Commission has a particular interest in areas of interlease arrangements when interchanges between authorities are contemplated. The Commission has a right to a detailed showing of the proposed operating patterns between the individual carriers because the particular problems of enforcement make knowledge essential to compliance with Commission rules. When the applicant gives no credible evidence concerning the interlease arrangements, the application is properly denied. RCW 81.80.312; WAC 480-12-210; WAC 480-12-215.

Order M. V. No. 142136, Quad Enterprises, Inc./Group VI, Inc., Hearing No. P-73257 (December 1990).

Order M. V. No. 140840, In re Mayne Nickless Courier Systems, Inc. d/b/a Bucky's Courier Systems, App. No. P-72291 (January 1990);

Order M. V. No. 126084, In re Tacoma Hauling Co., Inc., App. E-18498 (September 1982).

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### **WAC 480-12-210 (cont.)**

A lease that fails to specify the allocation of expenses, with the exception of a provision placing responsibility on the lessor for acquiring collision and liability insurance, fails to show "clearly" that control of the permit operations resides with the lessee. Despite contract recitations regarding a master-servant relationship, the agreement violates the rules. WAC 480-12-210(1)(d). Order M. V. No. 139898, In re North Counties Freight Lines, Inc./Mayne Nickless Courier Systems, Inc., d/b/a Bucky's Courier Systems, App. No. P-72291 (July 1989).

The provision in transferee's agreement that "the leased vehicle may be used by [lessor] for personal business. . ." is so structured that the vehicle is not in the exclusive control of the lessee for the duration of the lease, a violation of rules. WAC 480-12-210(1)(d). Order M. V. No. 139898, In re North Counties Freight Lines, Inc./Mayne Nickless Courier Systems, Inc., d/b/a Bucky's Courier Systems, App. No. P-72291 (July 1989).

An attempt to disguise an impermissible owner-operator arrangement, whose essential element is a division of revenue, bears on the transferee's fitness to conduct operations. WAC 480-12-210(1)(d). Order M. V. No. 139898, In re North Counties Freight Lines, Inc./Mayne Nickless Courier Systems, Inc., d/b/a Bucky's Courier Systems, App. No. P-72291 (July 1989).

Interleasing agreements may be available on a short-term basis between joint operations. WAC 480-12-210. Order M. V. No. 126916, In re Blackburn Truck Lines, Inc., App. No. E-18631 (August 1983).

When an applicant does not possess the equipment necessary to perform proposed operations and cannot give sufficient details of a proposed interlease agreement, the record is insufficient to determine the viability of leasing. RCW 81.80.070 (entry common carriers; fitness); WAC 480-12-210. Order M. V. No. 126084, In re Tacoma Hauling Co., Inc., App. No. E-18498 (August 1982).

**WAC 480-12-215 Pseudo leasing.**

The Commission has a particular interest in areas of interlease arrangements when interchanges between authorities are contemplated. The Commission has a right to a detailed showing of the proposed operating patterns between the individual carriers because the particular problems of enforcement make knowledge essential to compliance with Commission rules. When the applicant gives no credible evidence concerning the interlease arrangements, the application is properly denied. RCW 81.80.312; WAC 480-12-210; WAC 480-12-215. Order M. V. No. 126084, In re Tacoma Hauling Co., Inc., App. No. E-18498 (September 1982); Order M. V. No. 140840, in re Mayne Nickless Courier Systems, Inc. d/b/a Bucky's Courier Systems, App. No. P-72291 (January 1990); Order M. V. No. 142136, Quad Enterprises, Inc./Group VI, Inc., Hearing No. P-73257 (December 1990).

A finding of a proposed order that an applicant is fit despite an apparent violation of WAC 480-12-215's ban of pseudo leasing may be affirmed if it appears that the violation was neither hidden nor aggravated. RCW 81.80.070 (entry common carriers: fitness); WAC 480-12-215. Order M. V. No. 129636, In re Stuart B. Lervick d/b/a Stuart B. Lervick Company, App. No. P-67239 (May 1984).

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### **WAC 480-12-220      **Unfair or destructive competitive practices by carrier operating under permit.****

WAC 480-12-220(2) recognizes the right of persons using properly registered trade names to be free from confusion arising from another=s use of identical or deceptively similar names. In re Cascade Movers of Washington, Inc., Docket No. P-78560 (October 1996).

Under WAC 480-12-220(2), a motor carrier may not use a business name that includes geographical references, common names, or even the name of its owner, if doing so could interfere with the identification of an established motor carrier. In re Cascade Movers of Washington, Inc., Docket No. P-78560 (October 1996).

The term Adeceptively@ in WAC 480-12-220(2) does not mean deceitfully or intended to cause harm, but only that members of the public might be confused (or Adeceived@) as to the identity of businesses using a name. In re Cascade Movers of Washington, Inc., Docket No. P-78560 (October 1996).



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### **WAC 480-12-255 Contracts.**

No contract carrier may sublet any hauling under the contract or arrange with any other carrier to provide service covered by the contract. WAC 480-12-255. Order M. V. No. 146978, In re First Installation Repair & Service, Inc., d/b/a First, Inc., App. No. P-76480 (September 1993).

When a contract for contract carriage contains only an estimate of the number of shipments the shipper expects to tender, the Commission will not deny contract carrier authority to the applicant when it is clear that the shipper intends to tender a substantial amount, and a grant of authority may be conditioned on revision of the contract to state a minimum quantity. WAC 480-12-255. Order M. V. No. 146978, In re First Installation Repair & Service, Inc., d/b/a First, Inc., App. No. P-76480 (September 1993).

Provision of equipment for shipper's traffic, by itself, does not constitute a specialized service and will not, without more, require the Commission to grant an application for contract carrier authority. RCW 81.80.070 (contract: special service); WAC 480-12-255. Order M. V. No. 145480, In re Metro Freight Systems, Inc., App. No. E-75542 (September 1992).

When defects in a contract are technical in nature, the Commission may allow refiling to bring the contract into accord with the Commission rule on contracts. WAC 480-12-255. Order M. V. No. 143743, In re P & N Trucking Service, Inc., App. No. P-74144 (August 1991).

Contract carrier service to more than four shippers may raise a question about whether the carrier's operations are those of a bona fide contract carrier. WAC 480-12-255(7). Order M. V. No. 143490, In re Interstate Distributor Co., App. No. E-19994 (July 1991).

Service to six shippers under a contract carrier permit may not be inconsistent with contract carriage when two of the shippers are beverage distributors who require service not available from common carriers, and the other four are shippers of meat and meat by-products--commodities long recognized as appropriate for contract carriage. RCW 81.80.070 (contract [special service]); WAC 480-12-255(7). Order M. V. No. 141005, In re Nello Pistoresi & Son, Inc., App. No. E-19812 (March 1990).

No contract carrier may arrange with any other carrier to provide service to the shipper under the contract. WAC 480-12-255(9). Order M. V. No. 140955, In re United Couriers, Inc., App. No. E-19716 (February 1990).

The Commission's acceptance of a contract does not constitute a conclusive determination as to the legality of the service to be performed under the contract. RCW 81.80.070 (contract carriers: fitness); WAC 480-12-255. Order M. V. No. 140955, In re United Couriers, Inc., App. No. E-19716 (February 1990).

The purpose of the rule against subletting is to ensure that carriers do not enter into contracts that they cannot personally fulfill, and to assure that the contract carrier performing the service is responsible to the shipper. WAC 480-12-255(9). Order M. V. No. 140275, In re United Couriers, Inc., App. No. E-19716 (September 1989).

**WAC 480-12-255 (cont.)**

Although a supporting shipper has demonstrated that contract carrier service may be appropriate to its needs, the Commission will deny the application if the applicant has not proposed a lawful means to provide the service. RCW 81.80.070 (contract); WAC 480-12-255. Order M. V. No. 140275, In re United Couriers, Inc., App. No. E-19716 (September 1989).

Filing of rates and rate changes is not required of carriers engaged in armored car service. WAC 480-12-255. Order M. V. No. 139292, In re Oregon Armored Service, Inc., App. No. P-71976 (March 1989).

Contract carriers engaged in armored car service are not required to file rates and changes in rates; therefore, an allegation that an applicant offering such service charges unlawful rates is not pertinent to an application proceeding. WAC 480-12-255. Order M. V. No. 139292, In re Oregon Armored Service, Inc., App. No. P-71976 (March 1989).

A contract carrier is required to charge common carrier tariff rates unless and until it secures from the Commission specific authority to deviate from those rates. WAC 480-12-255. Order M. V. No. 138953, Western Way, Inc./Jim's Transfer, Inc., d/b/a DeVries Packing and Storage, App. No. P-71767 (January 1989).

When a "right of first refusal" provision in a contract does not specify a minimum volume of transportation, when the shipper indicates an unwillingness to be bound by such a provision, and when the shipper reserves the right to offer similar contracts to other carriers, the contract is insufficient to meet the minimum quantity requirements set forth in WAC 480-12-255. Order M. V. No. 137282, In re Savage Western Transports, Inc., App. No. P-70998 (February 1988). Order M. V. No. 137283, In re Bi-County Trucking, Inc., App. No. P-71011 (February 1988).

A contract carrier with authority to transport specified commodities statewide may file new contracts without violating RCW 81.80.080 or WAC 480-12-030, or needing rate docket hearings. RCW 81.80.080 and WAC 480-12-030 deal with applications for new authority, and under WAC 480-12-255(6) and WAC 480-12-295(9), a contract carrier with statewide authority for specified commodities may file its contracts without a rate docket hearing. Order M. V. No. 136191, In re Pony Express Courier Corporation of America, d/b/a Pony Express Courier, App. No. E-19233 (July 1987).

When an applicant for common carrier brokerage services does not propose to operate as a common carrier broker available to all shippers, but rather pursuant to a specialized contract with one shipper demanding many services, the brokerage is contract in nature. WAC 480-12-255. Order M. V. No. 135329, In re Better Home Deliveries, Inc., App. No. P-69864 (February 1987).

When an applicant seeking a permit as a common carrier broker conducts services that include physical handling and staging of the traffic, physical tender to the carriers, direct oversight of performance of the carriers including responses to complaints, and the handling of all carrier financial and bookkeeping arrangements, such services go far beyond common carrier brokerage services and may not be authorized as such. RCW 81.80.010(12); WAC 480-12-255. Order M. V. No. 135329, In re Better Home Deliveries, Inc., App. No. P-69864 (February 1987).

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### **WAC 480-12-255 (cont.)**

When an applicant possesses authority to operate as a contract carrier for a supporting shipper and seeks authority to operate as a broker securing transport for the same shipper, there is a potential for direct conflict, and the Commission may require relinquishment of the contract carrier authority. WAC 480-12-255. Order M. V. No. 135329, In re Better Home Deliveries, Inc., App. No. P-69864 (February 1987).

The underlying contract for contract carriage must meet the minimum standard established by WAC 480-12-255. Order M. V. No. 135278, In re G. J. Daniels, Inc. d/b/a Daniels Moving and Storage, App. No. P-69994 (January 1987).

When there is no determination by the Commission that a service agreement is legally sufficient as a contract, a grant of temporary authority does not prevent or estop the Commission from examining the issue in a parallel application for continuing authority. Estoppel; WAC 480-12-255. Order M. V. No. 135278, In re G. J. Daniels, Inc. d/b/a Daniels Moving and Storage, App. No. P-69994 (January 1987).

Although the federal government may preempt state carrier entry regulation, when it chooses not to do so an applicant seeking authority to serve as a contract carrier for a federal agency must comply with state entry requirements. WAC 480-12-255. Order M. V. No. 135278, In re G. J. Daniels, Inc. d/b/a Daniels Moving and Storage, App. No. P-69994 (January 1987).

When the minimum number of shipments during temporary contract carrier operations was sometimes below the level specified in the contract, the Commission may require that the contract be revised to reflect the actual minimum number of shipments to be tendered. WAC 480-12-255(5). Order M. V. No. 133416, In re Gary G. Brister d/b/a G & G Transfer, App. No. P-69123 (February 1986).

The Commission will not deny contract carrier authority to an applicant for lack of agreement on the terms of the contract governing rates when the applicant's shipper witness credibly assures the Commission of its willingness to pay the tariff rate, and when a grant of authority will be conditioned on revision of the contract to reflect tariff requirements. WAC 480-12-255. Order M. V. No. 133416, In re Gary G. Brister d/b/a G & G Transfer, App. No. P-69123 (February 1986).

When a contract for carriage includes one provision requiring charges at the tariff rate and another provision at a non-tariff rate, the Commission will condition a grant of authority upon the elimination of the inconsistent non-tariff portions of the contract. Contract carriers will charge no less than the tariff rate unless authorized by the Commission. WAC 480-12-255. Order M. V. No. 133416, In re Gary G. Brister d/b/a G & G Transfer, App. No. P-69123 (February 1986).

### **WAC 480-12-280 Tariffs, must have.**

A commodity or specific rate, such as "fresh corn, in the husk, loose in the truck", will take precedence over class rates. WAC 480-12-280. Cause TV-1713, Bellingham Frozen Foods, Inc. v. Dahlstedt Trucking Co. (August 1984).

### **WAC 480-12-295 Tariffs, proposed changes in--How made.**

A contract carrier with authority to transport specified commodities statewide may file new contracts

without violating RCW 81.80.080 or WAC 480-12-030, or needing rate docket hearings. RCW 81.80.080 and WAC 480-12-030 deal with applications for new authority, and under WAC 480-12-255(6) and WAC 480-12-295(9), a contract carrier with statewide authority for specified commodities may file its contracts without a rate docket hearing. Order M. V. No. 136191, In re Pony Express Courier Corporation of America, d/b/a Pony Express Courier, App. No. E-19233 (July 1987).

**WAC 480-12-320 Routing of freight.**

When a common carrier routes all of its shipments by air to Ohio and then back to Washington for delivery, the shipments are interstate in nature and exempt from Commission regulations. WAC 480-12-320. Order M. V. No. 136495, In re E-Z Xpeditors, Inc., Penalty Assessment No. 9311 (September 1987).

WAC 480-12-320(1) states the presumption that shipments that originate at a point in Washington and move over a route wholly in Washington are in intrastate commerce. An argument that the shipment might be in interstate commerce, without evidence of the shipment's interstate character, will be rejected. Order M. V. No. 136135, In re Sorenson Transportation Co., Inc., App. No. P-69680 (July 1987).

**WAC 480-12-330 Tariffs, observance of.**

Tariff No. 9, Item No. 60, the "bulky freight rule", applies only to items billed under class rates. Commodity rates take into account volume and weight. WAC 480-12-330(1). Cause TV-1607, Scott Paper Company v. Acme Inter-City Freight Lines (January 1984).

Rule No. 50 of Tariff No. 9, the "overflow rule", applies only when there is actual overflow into a second vehicle. The rule is not designed to generate minimum revenue to a carrier. WAC 480-12-330(1). Cause TV-1607, Scott Paper Company v. Acme Inter-City Freight Lines (January 1984).

Physical segmentation of shipments is not necessary, in order to take advantage of rated segments, when the shipment is of the sort contemplated by the tariff and there is no apparent reason to conclude that the combination of rates is improper. Commission policy is to allow the lowest combination of possible rates. WAC 480-12-330(2). Cause No. TV-1713, Bellingham Frozen Foods, Inc. v. Dahlstedt Trucking Co. (August 1984).

**WAC 480-12-350 Insurance.**

The Commission will dismiss its complaint against a carrier for failure to maintain requisite insurance, if that carrier provides sufficient evidence of insurance prior to entry of a final order; the Commission will rescind the initial order of cancellation and reinstate the carrier's certificate of authority. RCW 81.04.210; WAC 480-12-065; WAC 480-12-350. Order M. V. C. No. 1879, WUTC v. American Indian Elders, Hearing No. H-4993 (August 1990).

**WAC 480-12-990      **Appendix A--Classification of brokers, forwarders, and motor carriers of property.****

The Commission will not authorize the splitting of a commodity classification set forth in Appendix A to WAC 480-12-990 in a transfer proceeding. E.g., a carrier with generic bulk liquid commodities authority may not split some "liquid petroleum products" from other "liquid petroleum products." RCW 81.80.270;

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WAC 480-12-050; 480-12-990. Order M. V. No. 148103, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/ McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (August 1994).

The Commission will deny a common carrier's application to transfer part of its rights in a permit when the partition would result in the separation of commodities from a class of substantially related commodities or from a commodity classification in WAC 480-12-990 (Appendix "A" to Chapter 480-12 WAC). RCW 81.80.270; WAC 480-12-050; 480-12-990. Order M. V. No. 147766, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/ McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (April 1994).

Although a generic commodity classification, such as "bulk liquid commodities," generally may be divided in a transfer proceeding, the division may not split a commodity classification set forth in WAC 480-12-990. Thus, e.g., a carrier with generic bulk liquid commodities authority may split that authority between "liquid petroleum products" and "refrigerated liquid products," but may not split some "liquid petroleum products" from other "liquid petroleum products." RCW 81.80.270; WAC 480-12-050; 480-12-990. Order M. V. No. 147766, In re Arrow Transportation/Harris Transportation Company, App. No. P-76931; In re Arrow Transportation/McCall Oil and Chemical Corporation, d/b/a Cascade Petroleum Transportation, App. No. P-76933 (April 1994).

General freight authority, restricted to parcels of specified weight, does not permit bulk shipments in specialized vehicles, and a restriction against such bulk shipments is unnecessary and confusing. RCW 81.80.100; WAC 480-12-990. Order M. V. No. 147040, In re Star Moving & Storage, Inc./United Couriers, Inc., App. Nos. P-73707 & P-75799 (September 1993).

A per-package, per-shipment weight restriction is inconsistent with pre-1944 general freight authority and authority so limited is limited to general freight defined in WAC 480-12-990. Order M. V. No. 147040, In re Star Moving & Storage, Inc./United Couriers, Inc., App. Nos. P-73707 & P-75799 (September 1993).

Weight restrictions in permits are disfavored and should be imposed only when they are clearly indicated. WAC 480-12-070; 480-12-990. Order M. V. No. 146950, In re Lampson Railroad Contractors, Inc., App. No. P-76644 (September 1993).

A weight restriction is indicated when it marks a sufficiently clear dividing line between needed and unneeded service and when the applicant's actions may have contributed to a lack of service from existing carriers in the weight category specified. WAC 480-12-070; 480-12-990. Order M. V. No. 146950, In re Lampson Railroad Contractors, Inc., App. No. P-76644 (September 1993).

### **WAC 480-12-990 (cont.)**

The Commission may correct permit language that incorrectly labels authority when the nature of the authority granted clearly does not fit the label. WAC 480-12-070; 480-12-990. Order M. V. No. 146621, In re Acme Inter-City Freight Lines, Inc./Kenneth E. Kellar, App. No. P-76743 June 1993).

The packing and loading of household goods during a move is work that is traditionally accessorial to the transportation, and is activity contemplated by the Commission's Household Goods commodity classification. WAC 480-12-990. Order M. V. No. 145969, In re Affordable Rental Movers, Inc. and Affordable Truck Rental, Inc., Hearing No. H-5009 (January 1993).

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The Commission's Heavy Machinery commodity classification contemplates the provision of a complete heavy hauling service. WAC 480-12-990. Docket No. TV-920324, In re Victor J. Scalzo, d/b/a Thomas Scalzo Co. (October 1992).

The Commission's commodity classification number seven, "carriers engaged in dump trucking," does not encompass the regular hauling of contaminated dirt to a disposal site. WAC 480-12-990. Order M. V. No. 144941, In re Rissler Contracting Company, App. No. E-75297 (May 1992).

Authority to transport "general freight" issued before May 1, 1944, authorizes transportation of commodities requiring specialized handling or equipment as set forth in WAC 480-12-990, Appendix A, classification of carriers. WAC 480-12-050(5); 480-12-990.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991); recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 142724, In re Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (February 1991); recon. den., Order M. V. No. 143256 (May 1991); vacated other grounds, Order M. V. No. 143870 (September 1991).

In a transfer proceeding, pre-1944 general freight authority is treated as a collection of authorities under a common name, rather than as a unified authority. WAC 480-12-050; 480-12-990.

Order M. V. No. 144088, In re The Cater Transfer and Storage Co., d/b/a Cater Moving Systems/United Couriers, Inc., App. No. P-74167 (October 1991); recon. denied, Order M. V. No. 144282 (December 1991).

Order M. V. No. 143870, Star Moving & Storage, Inc./United Couriers, Inc., App. No. P-73707 (September 1991), vacating Order M. V. No. 142724.

Industrial minerals, including silica, limestone, dolomite, olivine, clay, talc and diatomite, may be transported under authority to haul "mine ores" when they are intended for refining or processing at the time of transportation. WAC 480-12-990. Order M. V. No. 143760, In re Mercer Trucking Co., Inc./ Zeph H. Robinson, d/b/a Robinson Excavating & Trucking, App. No. P-74033 (August 1991); corrected, Order M. V. No. 143964 (September 1991).

### **WAC 480-12-990 (cont.)**

A commodity that is not itself a building material, but is to be later included in a building material, is not a building material. Fly ash, which is later to be included in cement mixtures, may not be transported under building materials authority. WAC 480-12-990 Administrative Ruling No. 13. Order M. V. No. 133660, In re Washington Trucking, Inc., App. No. E-19174 (March 1986).

A tariff description is not necessarily the same as a description of the authority required to transport a commodity lawfully. Tariff classifications are generally irrelevant to the determination of what authority is required for transportation. RCW 81.80.120; WAC 480-12-990. Order M. V. No. 133160, In re Paul F. and Nancy S. Kimball/Allison-Mitchell Transfer, App. No. P-69103 (February 1986).

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The Commission may grant common carrier authority only to the extent that notice of an application is given to the public, and need for a service is proven. When an applicant seeks authority to serve "processing plants" in a list of specific food and food processing facilities, and proves need only to serve food processing plants, authority should be granted only to serve food processing plants. The term "processing plants" in that context does not include any facility involved in any manufacture or process other than food-related facilities. RCW 81.80.070 (entry common carriers: need for service); RCW 81.80.100; WAC 480-12-990. Order M. V. No. 130148, In re Common Carrier, Inc., App. No. E-18729 (August 1984).

When supporting shippers say that they have no need for service wholly within the city limits of Tacoma, their evidence does not support a grant of local cartage authority. RCW 81.80.070 (entry common carriers: need for service); WAC 480-12-990(E). Order M. V. No. 129800, In re Fort Lewis Taxi, No. 7, App. No. P-66877 (June 1984).

The term "medical supplies" includes items "connected with and unique to the practice of medicine" but does not necessarily include any product merely because it is delivered to a hospital. RCW 81.80.120; WAC 480-12-990(17). Order M. V. No. 127558, In re Jon S. Pansie d/b/a Tri-Pan Services, Inc., App. No. P-65704 (May 1983).

The Commission's definition of "Hazardous Materials" parallels the Code of Federal Regulations. Used petroleum products are hazardous materials and it is proper to transport them under hazardous materials authority. Evidence of need for transportation of used petroleum products will support, an application for hazardous materials authority. RCW 81.80.070 (entry common carriers: need for service); RCW 81.80.120; WAC 480-12-990(17). Order M. V. No. 126442, In re United Drain Oil Service, Inc., App. No. P-65787 (October 1982).

## CHAPTER 480-14 WAC

### MOTOR CARRIERS, EXCLUDING HOUSEHOLD GOODS CARRIERS AND COMMON CARRIER BROKERS<sup>\*\*\*\*</sup>

#### **WAC 480-14-180 Applications.**

The standards of regulatory fitness, public interest, and public convenience and necessity are no longer relevant to the determination of who should receive a motor carrier permit. In order to receive a permit now, an applicant must show proof of insurance and pass a safety fitness review. RCW 81.80.070; WAC 480-14-180, WAC 480-14-190. Order M. V. No. 148448, In re Merrel Cline, d/b/a Courtesy Mobile Home Service, App. No. P-77402 (February 1995).

#### **WAC 480-14-190 Permanent common carrier permits.**

The standards of regulatory fitness, public interest, and public convenience and necessity are no longer relevant to the determination of who should receive a motor carrier permit. In order to receive a permit now, an applicant must show proof of insurance and pass a safety fitness review. RCW 81.80.070; WAC 480-14-180, WAC 480-14-190. Order M. V. No. 148448, In re Merrel Cline, d/b/a Courtesy Mobile Home Service, App. No. P-77402 (February 1995).

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\*\*\*\* NOTE: The Federal Aviation Administration Authorization Act of 1994, P.L. 103-305, enacted in August 1994, preempted state economic regulation of intrastate motor carrier operations with the exception of household goods movers and common carrier brokers effective January 1, 1995. States are permitted to continue size and weight and hazardous materials enforcement, and safety and insurance regulation. Sections of Chapter 480-12 WAC that did not apply to household goods movers or brokers were repealed, and a new Chapter 480-14 WAC was created for all other carriers. Most of the then-existing safety regulations were repeated in the new chapter, and it set out new procedures for applications.





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## **CHAPTER 480-30 WAC**

### **AUTO TRANSPORTATION COMPANIES [BUSES AND AIRPORTERS]**

#### **WAC 480-30-010 Definitions.**

See RCW 81.68.010.

#### **WAC 480-30-020 Licenses, and rules and regulations.**

See RCW 81.68.040.

#### **WAC 480-30-030 Certificates--Auto transportation companies.**

See RCW 81.68.040.

#### **WAC 480-30-032 Notice of application; protests; contemporaneous applications.**

#### **Cross Reference**

< See "[Ashbacker](#) Doctrine" section.

#### **WAC 480-30-050 Tariff, naming rates and fares.**

See RCW 81.68.080.

A bus company showing of a disparity between interstate and intrastate rates is not, alone, sufficient to show that requested rate increases are needed and that the resulting fares would be just, reasonable, fair, and sufficient. RCW 81.68.030; WAC 480-30-050. Cause TC-1698, WUTC v. Greyhound Bus Lines, Inc., (June, 1983) (revised, MC-1515 Sub-No. 342 (1983)).

#### **WAC 480-30-060 Schedule of time and route.**

A bus company seeking to abandon routes must justify its use of revenue figures and the time periods chosen for developing those figures, and explain the company's analysis to demonstrate revenue loss and to satisfy the requirements of chapter 81.68 RCW and chapter 480-30 WAC. RCW 34.04.100; WAC 480-08-190; WAC 480-30-060(9). Order M. V. C. No. 1403, In re Greyhound Bus Lines, Inc., App. No. D-2442 (June, 1983)(revised, MC-1515 Sub-No. 342 (1983)).

#### **WAC 480-30-120 Uniform system of accounts and annual reports.**

The Bus Regulatory Reform Act does not preempt Washington statutes and regulations which require that a carrier demonstrate a revenue loss and a deterioration of operating ratios prior to the Commission's authorizing a bus route abandonment. Credible evidence that variable costs exceed revenues for affected routes is not presented when the evidence offered uses one system for figuring costs and another system for figuring revenues. RCW 81.68.020; WAC 480-30-120. Order M. V. C. No. 1403, In re Greyhound Bus Lines, Inc., App. No. D-2442 (June, 1983).

## **CHAPTER 480-40 WAC**

### **PASSENGER CHARTER CARRIERS**

**Cross reference:** See Chapter 81.70 RCW

#### **WAC 480-40-030 Certificates.**

The Commission is not estopped from finding a carrier unfit to conduct operations merely because the Commission reissued the carrier's currently held continuing authority during the pendency of the extension application. WAC 480-40-030(6)(b); WAC 480-40-030(9). Order M. V. CH. No. 995, In re O'Connor Limousine Service, Inc., App. No. CHA-199 (November 1983).

## **CHAPTER 480-50 WAC**

### **PASSENGER AND FERRY STEAMBOAT COMPANIES**

**Cross reference:** See Chapter 81.84 RCW

#### **WAC 480-50-020 General operation.**

The Commission does not regulate waterborne excursion and sightseeing traffic. RCW 81.84.010; WAC 480-50-020. In re San Juan Express, Inc. [v. Yachtship Cruiselines, Inc. and Glacier Bay Lodge, Inc.], Docket No. TS-940956, Fifth Supplemental Order (December 1994).

The classification of a voyage is determined by the characteristics and purpose of the voyage, not the subjective intention of any single passenger. RCW 81.84.010; WAC 480-50-020. In re San Juan Express, Inc. [v. Yachtship Cruiselines, Inc. and Glacier Bay Lodge, Inc.], Docket No. TS-940956, Fifth Supplemental Order (December 1994).

The test for regulation of waterborne passenger service is whether a passenger completes a journey at a point other than the point of origin, not merely whether a passenger leaves the boat even momentarily. Service that does not allow one-way travel does not require Commission approval. RCW 81.84.010; WAC 480-50-020. In re San Juan Express, Inc. [v. Yachtship Cruiselines, Inc. and Glacier Bay Lodge, Inc.], Docket No. TS-940956, Fifth Supplemental Order (December 1994).

#### **WAC 480-50-035 Notice of application; protests; contemporaneous applications.**

#### **Cross Reference**

< See "Ashbacker Doctrine" section.

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### **WAC 480-50-060 Time schedules.**

"Terminus" means either end point of a voyage, where passengers or freight terminate passage. RCW 81.84.010; WAC 480-50-060. In re San Juan Express, Inc. [v. Yachtship Cruiselines, Inc. and Glacier Bay Lodge, Inc.], Docket No. TS-940956, Fifth Supplemental Order (December 1994). **WAC 480-50-070 Suspension of service.**

Steamboat service that has not begun cannot be said to be discontinued or suspended. WAC 480-50-070. Order S. B. C. No. 490, Clipper Navigation, Inc. v. Puget Sound Express, Inc., Docket No. TS-900977 (February 1992).

### **WAC 480-50-120 Failure.**

Steamboat authority that is not exercised does not ripen into a property right. RCW 81.84.030; WAC 480-50-120. Order S. B. C. No. 490, Clipper Navigation, Inc. v. Puget Sound Express, Inc., Docket No. TS-900977 (February 1992).

### **WAC 480-50-130 Cancellation.**

The Commission review of a complaint alleging that a steamboat company has failed to observe the conditions or provisions of its certificate will be based on the factual situation extant at the time the complaint is filed. RCW 81.84.030; WAC 480-50-130. Order S. B. C. No. 490, Clipper Navigation, Inc. v. Puget Sound Express, Inc., Docket No. TS-900977 (February 1992).

Once a steamboat certificate is granted, a successful applicant has a duty to begin service within a reasonable time. RCW 81.84.010; 81.84.030; WAC 480-50-130. Order S. B. C. No. 490, Clipper Navigation, Inc. v. Puget Sound Express, Inc., Docket No. TS-900977 (February 1992).

## **CHAPTER 480-70 RCW**

### **SOLID WASTE COLLECTION COMPANIES**

**Cross reference** See Chapter 81.77 RCW

#### **WAC 480-70-040 Change of address.**

An allegation by a solid waste carrier that it did not receive a Commission order does not support reconsideration when the carrier failed to report a change in the address of its principal place of business as required by WAC 480-70-040, did not leave a forwarding address with the post office, and the Commission order was properly served on the carrier as provided in WAC 480-09-120(2)(c). WAC 480-09-120; 480-09-810; 480-70-040. Order M. V. C. No. 1992, WUTC v. Medical Waste Management Systems, Inc., Hearing No. H-5004 (December 1992).

#### **WAC 480-70-050 Definitions.**

##### **Cross Reference**

< See RCW 81.77.010.

The operative distinction between motor carriage authority and garbage collection authority is the purpose of the transportation. If the transportation is for disposal, the material is garbage; if the transportation is to a location for a further or higher use, the transportation is motor carriage. A motor carrier may not lawfully transport garbage except as incident to its motor carrier operation. Chapter 81.77 RCW; RCW 81.80.010(4); WAC 480-70-050(7). Order M. V. No. 133753, In re Sunshine Disposal, Inc., d/b/a Valley Transfer & Storage, App. No. E-19104 (April 1986).

#### **WAC 480-70-110 Certificate, sale, etc.**

The Commission will approve a transfer of a solid waste certificate if it is consistent with the public interest to do so. RCW 81.77.040; WAC 480-70-110. Order M. V. G. No. 1562, In re Yakima Valley Disposal, Inc./Yakima Waste Systems, Inc., App. No. GA-75821 (July 1992).

When an application for transfer of a solid waste permit is granted, duplicating authority and authority canceled by operation of law should be deleted to reflect the existence of one unified permit and to avoid problems with improper separate alienation. RCW 35.13.280; 35A.14.900; 81.77.040; WAC 480-70-110. Order M. V. G. No. 1444, In re Rainier Disposal Co., Inc./R.S.T. Disposal, Inc., d/b/a Tri-Star Disposal, App. No. GA-842; Snoking Garbage Co., Inc./R.S.T. Disposal, Inc., d/b/a Tri-Star Disposal, App. No. GA-843 (February 1991).

#### **WAC 480-70-120 Certificates, application for.**

An application cannot be amended to substitute one applicant for another, when the second applicant is not a successor in interest of the first. The new applicant must file an entirely new, original application. RCW 81.77.040; WAC 480-70-120. Order M. V. G. No. 1646, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (July 1993).

**WAC 480-70-130 Temporary certificates, application for.**

The Commission will deny an application for temporary solid waste authority when it finds, after investigation, that existing solid waste collection companies can supply the necessary service and that there is no immediate and urgent need for the requested services. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1721, In re Stericycle of Washington, Inc., App. No. GA-78077 (August 1994).

In granting temporary authority to preserve the status quo by allowing service under prior temporary authority to continue, the Commission will not grant the applicant authority to serve shippers whom it served in the past but who now are receiving service from other carriers and do not need or desire service from the applicant. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1700, In re Stericycle of Washington, Inc., App. No. GA-77745 (April 1994).

That an application for temporary authority is functionally an amendment to existing temporary authority is a factor that the Commission will consider in determining whether a grant of temporary authority is consistent with the public interest. WAC 480-70-130. Order M. V. G. No. 1689, In re Stericycle of Washington, Inc., App. No. GA-77304 (February 1994).

That the applicant did not submit sufficient information or that its information changed after the time its application for temporary authority was complete is not sufficient reason to grant reconsideration of the Commission's final order on the application. WAC 480-09-810; 480-70-130. Order M. V. G. No. 1677, In re Stericycle of Washington, Inc., App. No. GA-77304 (December 1993).

Motions addressed to a carrier's temporary authority must take place in the docket of the temporary authority. RCW 34.05.422; WAC 480-70-130. Order M. V. G. No. 1669, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (November 1993).

Generally, the Commission will not grant temporary solid waste authority when the certificated carrier already serving the territory is ready, willing, and able to provide the proposed service. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1624, In re Brent Gagnon, d/b/a West Waste & Recycling, App. No. GA-76793 (May 1993).

A solid waste collection company operating under temporary authority is an "existing carrier" for purposes of the determination of an application for overlapping temporary solid waste authority. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1633, In re Medical Resource Recycling System, Inc., App. No. GA-76819 (May 1993).

Ordinarily, the evaluation of factual issues beyond sufficiency of a temporary application and its support is better left to a hearing on the continuing or permanent solid waste authority, rather than decided in an application for temporary authority. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1633, In re Medical Resource Recycling System, Inc., App. No. GA-76819 (May 1993).

**WAC 480-70-130 (cont.)**

Shipper statements that merely express general support for a grant of temporary solid waste authority without identifying any service problem or any specific information from which the Commission could conclude that a grant of temporary authority is in the public interest, provide no support for an

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application for temporary authority. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1633, In re Medical Resource Recycling System, Inc., App. No. GA-76819 (May 1993).

WAC 480-09-500 gives the Commission discretion to use brief adjudications to resolve issues involving temporary applications. The decision to hold a brief adjudication and the decision to grant or deny temporary authority are both discretionary acts. RCW 81.77.110 WAC 480-09-500; 480-70-130. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

An order on temporary authority is not res adjudicata for facts or issues in a parallel full proceeding, because of the different standards for a grant and the limited argument and record on which temporary authority must be granted. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

The Commission's principal concern in deciding whether to grant temporary authority is need for service; if it appears reasonably probable that unmet need for service exists, and if other indicators are generally favorable to a grant, the Commission will grant authority. RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

A reasonable need that is imminent and is required prior to the time a contested application for permanent authority can be granted is an "immediate need." RCW 81.77.110; WAC 480-70-130. Order M. V. G. No. 1536, In re Ryder Distribution Systems, Inc., App. No. GA-75563 (January 1992).

### **WAC 480-70-150 Certificates, applications--Notice to existing carriers.**

Amendment and redocketing an application is appropriate to allow correction of a flaw in an application and to avoid the need to repeat long and expensive process. WAC 480-70-150. Order M. V. G. No. 1596, In re Ryder Distribution Resources, Inc., App. No. GA-75154 (January 1993).



**WAC 480-70-155 Contemporaneous applications.**

**Cross Reference**

< See "Ashbacker Doctrine" section.

WAC 480-70-155, the Commission's "contemporaneous applications" rule for the solid waste industry, does not apply to transfer applications. Order M. V. G. No. 1772, In re Buchmann Sanitary Service, Inc./Browning-Ferris Industries of Washington, Inc. App. No. GA-78433; In re The Disposal Group, Inc./Browning-Ferris Industries of Washington, Inc., App. No. GA-78444 (March 1996).

The Commission will not consider exempting an applicant from compliance with WAC 480-70-155's 30-day rule for contemporaneous consideration of overlapping applications absent a demonstration that the benefits to the public interest that would result sufficiently outweigh the administrative burden and the possible detriment to the initial applicant. Order M. V. G. No. 1668, In re Brent Gagnon, d/b/a West Waste & Recycling, App. No. GA-76306 (November 1993).

**WAC 480-70-160 Certificates, qualifications for.**

Financial ability to conduct operations is particularly significant in transporting hazardous materials, as the carrier must provide sometimes-costly protection from hazards of the cargo. Maintenance and personnel are also particularly significant for such carriers. WAC 480-70-160. Order M. V. No. 144397, In re Safco Safe Transport, Inc., App. No. P-73623 (December 1991).

**WAC 480-70-770 Form of bills.**

The Commission continually balances the "customers' right to know" and its reluctance to burden utilities and customers with additional requirements. WAC 480-70-770. King County Department of Public Works, Solid Waste Division v. Seattle Disposal Company, Rabanco Ltd., d/b/a Eastside Disposal and Container Hauling, Docket No. TG-940411 (September 1994).

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